

BIROn - Birkbeck Institutional Research Online

Macmillan, Fiona (2013) Testing the working taxonomy of arts festivals. Working Paper. Cultivate Project, Copenhagen, Denmark.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/9922/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html>
contact lib-eprints@bbk.ac.uk.

or alternatively

Testing the Working Taxonomy of Arts Festivals

Fiona Macmillan

Professor of Law, Birkbeck, University of London and Visiting Professor
of Law, University of Roma Tre

CULTIVATE WORKING PAPER 3

Table of Contents

Section	Heading	Page
1	The Working Taxonomy	3
2	The Significance of Public/Private Funding	3
<i>2.1</i>	<i>Theoretical starting point</i>	<i>3</i>
<i>2.2</i>	<i>Relationship with intellectual property “awareness”</i>	<i>4</i>
<i>2.3</i>	<i>Relationship with cultural heritage credentials</i>	<i>7</i>
<i>2.3.1</i>	UNESCO and European Union patronage	<i>7</i>
<i>2.3.2</i>	Local funding	<i>12</i>
<i>2.3.3</i>	Ticket sales	<i>14</i>
3	Festival Audience	15
<i>3.1</i>	<i>Theoretical starting point</i>	<i>15</i>
<i>3.2</i>	<i>Distinguishing between professional and public</i>	<i>16</i>
<i>3.3</i>	<i>Openness and closure?</i>	<i>18</i>
4	Commercial or Creative?	23
<i>4.1</i>	<i>Theoretical starting point</i>	<i>23</i>
<i>4.2</i>	<i>Commercial versus creative</i>	<i>24</i>
<i>4.3</i>	<i>Pre-festival creative or cultural production</i>	<i>27</i>
<i>4.4</i>	<i>Post-festival creative or cultural production</i>	<i>28</i>
<i>4.5</i>	<i>Commerce and cultural heritage</i>	<i>29</i>
<i>4.6</i>	<i>Creativity, commerce and intellectual property</i>	<i>30</i>
5	Relationship to Copyright Subject Matter	31
<i>5.1</i>	<i>Theoretical starting point</i>	<i>31</i>
<i>5.2</i>	<i>Copyright and the creative process</i>	<i>32</i>

5.2.1	Product versus process	32
5.2.2	Material form	34
5.2.3	Hybrid works and new artistic forms	35
5.2.4	Author versus multiple collaborators	37
5.2.5	Re-use of copyright works	38
5.3	<i>Uneven coverage of copyright</i>	40
5.3.1	Effect on creativity and cultural production	40
5.3.2	Implications for the relationship between copyright and cultural heritage	42
6	Conclusion	46
App 1	Festivals in Operation in 2013	49
App 2	Festivals (Apparently) Suspended or Closed in 2013	55
App 3	Festivals Operating under the Patronage of UNESCO and/or the European Union	57

1. The Working Taxonomy

One of the objectives of this research project is to understand and analyse the phenomenon of the arts festival in the context of an enquiry into its relationship with the regime of intellectual property and the concept of cultural heritage. Accordingly this project proposed a working taxonomy of arts festivals based upon the following factors:

- Whether the festival is privately or publicly funded;
- Whether the festival is aimed at a “professional” audience or at the general public;
- Whether the primary purpose of the festival is the marketing of discrete cultural products (for example, books, films, music) or is the generation or development of creative interactions;
- Whether the subject matter of the festival falls within the possible scope of copyright protection (that is, the so-called creative arts) or not.

This Working Paper considers the relevance and relative importance of each of these factors in the light of the empirical research, which has been described in the project’s second Working Paper.¹

2. Significance of Public/Private Funding

2.1 Theoretical starting point

The question of public/private funding of festivals was proposed in the original taxonomy of the basis of the following considerations:

- (a) The possibility that the source of funding may impact on both the consciousness of and enforcement of intellectual property rights. For instance, one might assume – but perhaps wrongly – that since intellectual property rights are private property rights the level of consciousness regarding them, at least on the part of festival organizers – is higher where the festival is privately funded.² This assumption is based on the idea that those that make a “private

¹ See F Macmillan, “A Taxonomy of Arts Festivals: Mapping Issues in Cultural Property and Human Rights” (Working Paper 2, HERA “Cultivate Project”, 2013, <http://www.cultivateproject.dk/>) (hereafter “Working Paper 2”).

² In fact, available evidence tends to suggest that a festival completely funded in this way is a rarity. Eg, none of the festivals studied in the EU Seventh Framework Funded Project, *Art Festivals and the European Public Culture* (Project No 215747, University of Sussex, 2008-2011) (hereafter “Euro-Festival Project”) appear to have been funded solely in this way. (For a list of the festivals studied in the Euro-Festival Project, see n 6 *infra*.)

investment” are more likely to either: (i) want some share in the intellectual property rights generated by or otherwise relevant to the festival activity; or (ii) want some assurances that the festival is administered in such a way that private property restrictions between participants and third parties are respected.

- (b) The possibility that the source, level and purpose of any public funding may be relevant to the question of whether or not a particular arts festival can be considered a cultural heritage institution. Interesting questions also arise in this respect in relation to festivals that derive a substantial portion of their funding from ticket sales. Can such festivals be considered to have a superior claim to the status of cultural heritage on the basis that the question of what is cultural heritage³ can be considered as a “bottom up” issue with the result that public support indicates a particular social or symbolic value? The alternative approach here would be assert that public support in the form of ticket sales is equivalent to commercial success and that this cannot be regarded as bearing on the characterization of cultural heritage. This may be, however, to misunderstand the distinctive notion of the festival as not merely “product” but rather “event” having a particular social and cultural significance.⁴

2.2 Relationship with intellectual property “awareness”

So far as the first consideration is concerned, the evidence to support the suppositions on which it is based is equivocal at best. The approach of this project based on a broad survey of a range of festivals,⁵ rather than a detailed analysis of specific festivals, only permits general observations on the question of the public-private balance in festival funding. Overall, however, the festival sector appears to rely on a mix of public and private funding. The balance varies from festival to festival, although festivals that rely entirely, or substantially, on private funding seem to be relatively rare. The Euro-Festival Project characterised the funding of the thirteen festivals it studied in depth as being either (a) “a mixed bag of public subsidies” (in which funds from ticket sales and private sponsorship were present, but less proportionally significant) or (b) a combination of “public subsidies, private sponsorship and revenues from ticket sales”⁶.

³ See, eg, J Blake, “On Defining the Cultural Heritage” (2000) 49 *International and Comparative Law Quarterly* 61-85.

⁴ See Working Paper 2, n 1 *supra*, sections 7.1.1 & 7.4.

⁵ See Working Paper 2, n 1 *supra*, section 5.

⁶ L Giorgi, “Introduction” in L Giorgi (ed), *European Arts Festivals: Cultural Pragmatics and Discursive Identity Frames Cosmopolitanism* (EURO-FESTIVAL Project: European Arts Festivals and

It should be noted that there are some difficulties, at the margins, in drawing the distinction between public and private funding. Characterising funding from sources such as the European Union, UNESCO, states, regional or local public authorities, as public is relatively unproblematic. Similarly, forms of funding or financial assistance from private industry can be identified from the lists of sponsors and donors that appear on many of the websites studied in this project.⁷ More difficult questions can arise with respect to the characterization of funding from charities. Some types of charitable funding might be considered to have a quasi-public nature. There is some basis for making this claim even with respect to charities established for the purpose of funding particular festivals. For instance, while the WOMAD Foundation was established for educational purposes,⁸ research conducted as part of the Euro-Festival Project shows that there are financial synergies between the WOMAD festival company, WOMAD Ltd, and the Foundation.⁹ While the Foundation (like the WOMAD festivals themselves) is closely linked to Peter Gabriel¹⁰ and to the Real World Group,¹¹ it has also received public monies in order to sustain its activities.¹² Other forms of charitable funding appear to be clearly linked to private interests. Available evidence suggests that charitable funding in the festival sector may be derived from (a) charitable organizations established by private donors or sponsors specifically for the purpose of funding a particular festival,¹³ or (b) from charitable foundations funded by private donors for the purpose of supporting artistic and cultural activities.¹⁴ In case (a), such private donors or sponsors often, but not

Public Culture, July 2010), <http://www.euro-festival.org/publications.html>), 10-19, at 12. The festivals mainly funded by public subsidy include: Berlin International Literature Festival, Mostra di Venezia, Vienna Jewish Film Festival & Wiener Festwochen. The festivals mainly funded by a public/private combination include: Berlin Film Festival, Brighton Festival, Cannes Festival & Hay-on-Wye Literature Festival.

⁷ See Working Paper 2, n 1 *supra*, Appendices 1-3.

⁸ J Chalcraft, "A History of WOMAD" in J Segal & L Giorgi (eds), *European Arts Festivals from a Historical Perspective* (EURO-FESTIVAL Project: European Arts Festivals and Public Culture, July 2009), <http://www.euro-festival.org/publications.html>), 139-150, at 140.

⁹ J Chalcraft, "The WOMAD Festival" in Giorgi (ed), n 6 *supra*, 103-129, at 104-106; & see also Chalcraft, n 8 *supra*.

¹⁰ Through the provision of his "cultural (and probably) financial capital": Chalcraft, n 8 *supra*, at 141.

¹¹ Chalcraft, n 8 *supra*, esp at 146.

¹² Chalcraft, n 9 *supra*, at 105.

¹³ A famous example of this is the Sundance Film Festival, which was established and is run by the Sundance Institute, founded by Robert Redford: See <https://www.sundance.org/about/> (accessed 3 May 2013). See also, eg, K Turan, *Sundance to Sarajevo: Film Festivals and the World They Made* (Berkeley: University of California Press, 2002), 31-48; & P Biskind, *Down and Dirty Pictures: Miramax, Sundance and the Rise of Independent Film* (London: Bloomsbury, 2007).

¹⁴ Eg, the Borderlands Literature Festival, which was set up and is funded by the Allianz private cultural foundation, https://kulturstiftung.allianz.de/en/projects/literature/european_borderlands/index.html (accessed 6

always, have some connection with the cultural industries most closely connected with the festival in question. In case (b), the evidence does not seem to suggest a particular connection with the cultural industries.

There is only indirect evidence to support the proposition that festivals with a significant proportion of private funding are more intellectual property “aware”. This evidence is reflected the following observations, from the Euro-Festival Project, contrasting festivals which are funded by a public-private mix, and those that are largely funded by public subsidy. The former “are more likely to seek and achieve a balance of ... ‘commercial’ and ‘aesthetic’ logics”, whereas the latter “are more concerned about issues of quality (either rhetorically or in terms of criteria), even when they too mix artistic representations in order to increase their outreach”.¹⁵ The contrast of the commercial and the aesthetic is reminiscent of the famous comment of sociologist (and film director) Edgar Morin: “The function of a festival is to commercialise what belongs to aesthetics, and to aestheticize what is commercial.”¹⁶ The significance of this balance in the present context is that the process of commercialization is likely to involve reliance on and the exercise of intellectual property rights.¹⁷ This is particularly likely to be the case in the context of film festivals and music festivals. In the case of film festivals, this is because the aesthetic considerations governing film as an art-form are embedded in a process of commodification.¹⁸ The case of music is somewhat different in the festival environment because, in general and in all the cases studied in this project, music festivals involve live performance and not the playing of pre-recorded material.¹⁹ Nevertheless, the commercial exploitation of music festival performances in the form of so-called live recordings is common-place and, in at least some cases, appears to be significant to the continued funding of the festival in question.²⁰ A speculative case may be made for the proposition that the more likely it is that works shown or performed at festivals can be commercially exploited through the licensing of

May 2013): see Giorgi, n 6 *supra*, at 21; & L Giorgi, “The Borderlands Festival in Search of an Academic Topos between Europe and the European Union” in Giorgi, n 6 *supra*, 63-72, at 66.

¹⁵ L Giorgi, “Introduction” in Giorgi (ed), n 6 *supra*, 10-19, at 18.

¹⁶ E Morin, “Notes for a Sociology of the Cannes Festival” (1955) 114-115 *Les temps modernes* 273-284, at 279.

¹⁷ On the nature of copyright interests in the festival environment, see Working Paper 2, n 1 *supra*, section 7.2.2.

¹⁸ As I have observed elsewhere, films are born as commodities and thus represent an interesting example of the merging of creativity and commodification: see, eg, F Macmillan, “The Cruel ©: Copyright and Film” [2002] *European Intellectual Property Review* 483-492.

¹⁹ On this point, see Working Paper 2, n 1 *supra*, section 7.2.2.

²⁰ Eg, see Chalcraft, n 9 *supra*, at 105-106 & Chalcraft, n 8 *supra*, at 141ff, in which there is a discussion of the licensing arrangements for music played at the WOMAD Festival and the significance of these arrangements to the funding of the festival.

intellectual property, the more likely it is that private funding will be available. Thus there is a certain circularity in the question of the relationship between private funding and the exploitation of intellectual property in the festival context.

2.3 Relationship with cultural heritage credentials

The question of the way in which funding arrangements might reflect on the cultural heritage credentials of a festival is a more fruitful one in the context of this project. The following comments are based on two propositions that are examined in more detail in the second working paper of this project. The first proposition is that cultural heritage should be defined as being those things (moveable and immovable, tangible and intangible) that a community or people considers worth handing on to the future.²¹ The second proposition is that the characterization of something as cultural heritage necessarily endows it with a public or community character.²² It is, on this basis, distinguishable from intellectual property, which is a private property right. Bearing in mind these propositions, the provision of public funds or subsidies to support an arts festival as event²³ might be considered to have some bearing on the question of its quality as a form of cultural heritage. As already noted, festivals that are entirely privately funded are a rarity²⁴ so there seems little point in engaging in an extended consideration of whether the absence of public funding suggests a contrary conclusion. Three questions of more interest arising from the empirical research are: (1) the significance of UNESCO and European Union patronage; (2) the significance of local funding; and (3) the significance of funding through ticket sales. Each of these questions is now examined in turn.

2.3.1 UNESCO and European Union patronage

As related in the second working paper of this project,²⁵ during 2012 nineteen of the 197 festival websites surveyed for the purposes of this project²⁶ disclosed patronage²⁷ from either UNESCO or the European Union and, in one case, from both. In 2013 the picture has changed with

²¹ See Blake, n 3 *supra*, at 68-69.

²² Working Paper 2, n 1 *supra*, para 7.2.3.

²³ See Working Paper 2, n 1 *supra*, paras 7.1.1 & 7.2.3.

²⁴ Although this assertion partly depends on whether charitable funding is considered public or private. As noted above, there are festivals that are almost totally reliant on charitable funding, eg the Borderlands Literary Festivals: see n 14 *supra*.

²⁵ Working Paper 2, n 1 *supra*, App 5.

²⁶ For a composite list of the 197 sites studied from 2010 to 2012, see Working Paper 2, n 1 *supra*, Appendix 1 (119 film festivals), Appendix 2 (16 music festivals) & Appendix 3 (62 culture festivals); see also Working Paper 2, *ibid.*, section 6.

²⁷ The concept of patronage is used here generically to describe patronage and/or funding and/or support and/or collaboration and/or partnership. All five expressions are used on the festival websites under consideration.

the result that, out of 146 festivals (of the original 197) that will run in this calendar year,²⁸ the patronage of either UNESCO or the EU is disclosed on 26 festival websites.²⁹ In contrast to the situation prevailing in 2012: (a) there is one festival that discloses patronage from both organizations;³⁰ (b) the number of festivals in the original sample disclosing the patronage of UNESCO has declined from 7 to 4;³¹ and, (c) the number of festivals disclosing patronage from the European Union has increased from 13 to 23.³²

European Union patronage is complicated by the number of different European Union institutions that apparently act as patrons and/or funders. In the list of festivals currently disclosing this relationship, aside from generic references to the European Union, there are also references to MEDIA EU,³³ EU (Media Plus Programme),³⁴ EU (Project on Crossroads in European Literature),³⁵ EU (European Agricultural Fund for Rural Development),³⁶ EU (European Regional Development Fund),³⁷ EU (DG – Culture and Education),³⁸ EU (Culture),³⁹ the European Commission,⁴⁰ the European Parliament,⁴¹ the Italian Delegation to the European Parliament.⁴² Patronage from the European Union is split almost evenly between film festivals and culture festivals: 14 of the 23 festival websites under consideration were film festivals, and 9 were general culture

²⁸ Organizational problems, including lack of funding, have resulted in the suspension or closure of a number of the festivals originally studied. Appendix 1 contains a list of those festivals, from the original list of 197 festivals, that will run in 2013. Appendix 2 contains a list of those festivals, from the original list of 197 festivals, currently in suspension or closed.

²⁹ See Appendix 3 to this working paper.

³⁰ Festival Internazionale del Cinema d'Arte, <http://www.festivalcinemadarte.it/>, site accessed 05/07/2013.

³¹ See Working Paper 2, n 1 *supra*, Appendix 5 & Appendix 3 to this Working Paper. The 2 festivals currently disclosing UNESCO patronage were also amongst the 7 previously disclosing such patronage.

³² See Working Paper 2, n 1 *supra*, Appendix 5 & Appendix 3 to this Working Paper. There are only 4 festivals that disclosed EU patronage on their websites in both 2012 and 2013. Of the 13 festivals disclosing EU patronage in 2012, 6 are now in suspension or closed.

³³ Bergamo Film Meeting, www.bergamofilmmeeting.it, site accessed 13/05/2013.

³⁴ Trieste Film Festival, www.triestefilmfestival.it, site accessed on 21/05/2013.

³⁵ Pordenonelegge – Festa del Libro con gli autori, www.pordenonelegge.it, site accessed 27/05/2013.

³⁶ Umbria Film Festival, www.umbriafilmfestival.com, site accessed 22/05/2013.

³⁷ Women's Fiction Festival (Festival internazionale di narrative femminile), www.womensfictionfestival.com, site accessed 27/05/2013.

³⁸ Voci di Fonte – Festival di Siena, www.sienafestival.it, site accessed 27/05/2013.

³⁹ Fabbrica Europa, www.fabbricaeuropa.net, site accessed 24/05/2013.

⁴⁰ Festival Internazionale del Cinema d'Arte, <http://www.festivalcinemadarte.it/>, site accessed 05/07/2013; MedFilm Festival – Cinema del Mediterraneo a Roma, www.medfilmfestival.org, site accessed 14/05/2013; N.I.C.E. New Italian Cinema Events, www.nicefestival.org, site accessed 20/05/2013; Terra di Siena Film Festival, www.sienafilmfestival.it, site accessed 14/05/2013.

⁴¹ Festival del Cinema Europea, www.festivaldelcinemauropeo.it, site accessed 16/05/2013.

⁴² MedFilm Festival – Cinema del Mediterraneo a Roma, www.medfilmfestival.org, site accessed 14/05/2013.

festivals.⁴³ This represents a change from the situation prevailing in 2012, under which the preponderance of festivals disclosing some form of EU patronage were film festivals (11 out of 13) with the remainder being music festivals.⁴⁴

In relation to the sample of festival websites under consideration, UNESCO patronage appears to have focussed on film festivals. In 2012, out of the 7 festival websites that disclosed the patronage of UNESCO, 6 were film festivals and the other was a music festival.⁴⁵ In 2013, all the festival websites disclosing UNESCO patronage are film festivals⁴⁶ and are operating under the patronage of the Italian National Commission for UNESCO (La Commissione Nazionale Italiana per l'UNESCO), rather than under that of the seat of UNESCO in Paris. Information from the Italian National Commission suggests that this apparent bias in favour of film festivals is, partly, a distortion produced by the particular sample.⁴⁷ In 2012, for example, there were 242 applications for the patronage of the Italian National Commission of which 29 were for arts festivals. In 2013, up to 1 July, there have been 136 applications for patronage of which 19 have been for arts festivals. From the publicly available information it is not possible to identify the fate of all the applications for patronage of arts festivals in 2012 and 2013. However, based on information available on festival websites, the patronage of the Italian National Commission for UNESCO was granted to at least 7 applicant arts festivals in 2012⁴⁸ and at least 8 in 2013.⁴⁹ Overall, in respect of all requests received for the patronage of the Italian National Commission of UNESCO, the rate of grant of patronage in 2012 was approximately 70%; and in 2013, up until 1 July, 38 out of the 136 applications have been refused, suggesting a similar overall success rate for patronage requests.

The website of the Italian National Commission for UNESCO states:

⁴³ See Appendix 3.

⁴⁴ See Working Paper 2, n 1 *supra*, Appendix 5.

⁴⁵ See Working Paper 2, n 1 *supra*, Appendix 5.

⁴⁶ See Appendix 3.

⁴⁷ Interview with officers of the Italian National Commission of UNESCO responsible for the granting of patronage requests, 1 July 2013, Rome.

⁴⁸ This includes the four festivals listed in Appendix 3. The others are: Sport Movies and Television - Milano International Fict Fest, <http://sportmoviestv.com>, site accessed 07/07/2013; GEF – Festival Mondiale di Creatività nella Scuola, www.gef.it, site accessed 07/07/2013; Suq a Genova, www.suqgenova.it, site accessed 07/07/2013.

⁴⁹ These are the four festivals listed in Appendix 3; Film Caravan, www.filmcaravan.org, site accessed 08/07/2013; Sicilia Ambiente – Documentary Film Festival, www.festivalsiciliambiente.it, site accessed 08/07/2013; Sport Movies and Television - Milano International Fict Fest, <http://sportmoviestv.com>, site accessed 07/07/2013; & Suq a Genova, www.suqgenova.it, site accessed 07/07/2013.

Il patrocinio è la forma più prestigiosa di sostegno che l'Organizzazione o la Commissione Nazionale Italiana per l'UNESCO possono apportare a un evento o ad una manifestazione. Esso manifesta la volontà politica assolutamente discrezionale dell'Organizzazione o della Commissione Nazionale Italiana di appoggiare moralmente un'attività o un progetto. Il Patrocinio dell'UNESCO, o della Commissione Nazionale Italiana per l'UNESCO, viene concesso nei confronti di iniziative che abbiano un alto valore sul piano scientifico, educativo o culturale, secondo i principi elencati nelle Linee Guida.⁵⁰

An almost identical form of words is used in Article 11 of the said Guidelines (*Linee Guida*),⁵¹ which define the concept of patronage making it clear that the moral support that comes with UNESCO patronage does not extend to financial or legal responsibility.

Application for the patronage of UNESCO may be made either directly to UNESCO in Paris or to the National Commission. Article 9 of the Guidelines lay down the situations in which patronage will be granted. These include patronage for an event, activity or project, including situations in which an agreement is reached with another organization in relation to a specific activity, event or project. According to Article 12, subject to particular conditions and criteria, the patronage of UNESCO is available to: activities of international or regional importance; national or sub-regional activities; and, to certain publications, cinematographic and audio-visual works. Article 16 lays down the criteria for the grant of patronage. This Article makes reference to the criteria laid down in the *Directive concerning the use of the name, acronym, logo and Internet domain names of UNESCO*.⁵² It appears that the requirements laid down in this Directive are summarised in the "Form for Requesting the Use of the Name and Logo of UNESCO", which is found in the attachments to the *Guidelines*. This form requests information on: the scale of the proposed activity (for example, international, regional, sub-regional or national); the number of participants and the key audience; media

⁵⁰ "Patronage is the most prestigious form of support that the Organization or the Italian National Commission for UNESCO can bring to an event or occasion. It demonstrates the political will, exercised at the absolute discretion of the Organization or the Italian National Commission for UNESCO, to give moral support to an activity or project. The Patronage of UNESCO, or of the Italian National Commission for UNESCO, is granted to initiatives that have a high scientific, educational or cultural value, according to the principles listed in the Guidelines." (my translation), <http://www.unesco.it/cni/index.php/patrocini>, accessed 9 June 2013.

⁵¹ *Linee guida concernenti l'uso del nome, dell'acronimo, dei loghi e dei nomi di dominio Internet e la concessione dei patrocini dell'UNESCO e della Commissione Nazionale Italiana per l'UNESCO*, http://www.unesco.it/_filesPATROCINI/LINEE%20GUIDA5.pdf, accessed 9 June 2013.

⁵² *Direttive concernenti l'uso del nome, dell'acronimo, del logo e dei nomi di dominio Internet dell'UNESCO*, approved by Resolution 34 C/86: see Article 16(1)(a).

visibility; the relationship to UNESCO's strategic objectives; and "if there are opportunities for UNESCO Secretariat or UNESCO National Commission in your country to actively participate in your activity."

The circumstances in which the patronage of the Italian National Commission will be granted are laid down in Articles 18 and 19. Article 18 provides that this patronage can be granted to various types of activities including congresses, meetings, conferences, works of the mind, and national and international events. However, it notes that this patronage is not usually available to events that are permanent or repeat themselves periodically. Nor is it available, in the usual case, to works of living artists or exhibitions of their works. Similarly, courses at educational institutions, and political, religious, trade union or military events are excluded from the possibility of enjoying the patronage of the National Commission. The five criteria that are subject to evaluation in respect of a request for the grant of patronage by the National Commission are laid down in Article 19, as follows:

- (a) active involvement, collaboration or presence of the National Commission;
- (b) the fact that the request concerns an exceptional activity at the international or national level which presents the possibility of a real impact on education, science, culture or communication⁵³ in a way that can significantly contribute to the visibility of UNESCO;
- (c) the fact that the products or activities proposed for patronage are consistent with the medium term strategies of UNESCO, and with the programme and budget in force at the time of the application, or are directly connected to programmes, projects, events, activities, publications or products of UNESCO, such as, for example, days or years that are dedicated to specific thematic activities;
- (d) the existence of adequate professional guarantees and ethics compliance in relation to the participants and those responsible for the programmes, projects, events, activities or products to be subject to patronage;
- (e) the existence of adequate guarantees with respect to the legal, financial and technical aspects of the relevant activity.⁵⁴

⁵³ Which apparently represent thematic areas of UNESCO operations: see <http://www.unesco.org/new/en/unesco/themes/>, accessed 11 June 2013.

⁵⁴ Article 19.1 (my translation).

According to information supplied by the Italian National Commission for UNESCO, when patronage is granted to arts festivals, this is regarded as an exception to the general rule in Article 18.2 that patronage is not ordinarily granted to events that repeat themselves periodically (as is usually the case with arts festivals). Such an exception will be made, as is provided for in Article 19.2, for an activity at the national or international level that presents the possibility of a real impact on culture and can significantly contribute to the visibility of UNESCO. So far as making a real impact on culture is concerned, priorities expressed by UNESCO through its various instruments,⁵⁵ such as the promotion and protection of cultural diversity, are taken into account in the relevant assessment. Patronage is granted for only one edition of a festival at a time, although applications may be made in successive years. A basic precondition for its grant is that festivals must have a fixed start and end date.

Finally, it should be noted that, in accordance with Part II of the Guidelines, application can be made for the use of various special types of UNESCO logos, including the World Heritage logo,⁵⁶ the logo for UN DESD (United Nations Decade of Education for Sustainable Development),⁵⁷ and the DESS (Decennio dell'Educazione per lo Sviluppo Sostenibile) logo.⁵⁸ The documentary film festival, Sicilia Ambiente, appears to have been granted the right to display the DESS logo.⁵⁹

2.3.2 Local funding

Something that is particularly striking is the high level of patronage, sponsorship, partnership and/or collaboration with national, regional and local public authorities that is disclosed on the surveyed festival websites. In the sample of 86 film festival websites under consideration:⁶⁰

- 66 websites disclose some type of relationship with patrons, sponsors, partners, supporters and/collaborators and of these 56 have a relationship of one of these types with national, regional or local public authorities;

⁵⁵ See Working Paper 2, n 1 *supra*, section 7.5.

⁵⁶ *Logo del Patrimonio Mondiale*: UNESCO Guidelines, n 51 *supra*, Arts 28-38. Applications may be made to either the head office in Paris or to the National Commission.

⁵⁷ UNESCO Guidelines, n 51 *supra*, Arts 39-46. Applications must be made to the head office in Paris.

⁵⁸ UNESCO Guidelines, n 51 *supra*, Arts 47-53. Applications must be made to the National Commission.

⁵⁹ www.festivalsiciliambiente.it/2013/sponsor-e-partner-2/, site accessed 08/07/2013.

⁶⁰ See Appendix 1.

- 29 websites disclose a relationship with Il Ministero per i Beni e Le Attività Culturali (Ministry of Culture) and of these 9 disclose a relationship with another public or political authority at the national level;⁶¹
- 48 websites disclose a relationship with regional and/or local (provincial and/or commune) public authorities.

In the sample of 10 music festivals under consideration:⁶²

- 8 websites disclose some type of relationship with patrons, sponsors, partners, supporters and/collaborators and of these 5 have a relationship of one of these types with national, regional or local public authorities;
- one website discloses a relationship with Il Ministero per i Beni e Le Attività Culturali (Ministry of Culture);⁶³
- 5 websites disclose a relationship with regional and/or local (provincial and/or commune) public authorities.

In the sample of 50 general culture festivals under consideration:⁶⁴

- 39 websites disclose some type of relationship with patrons, sponsors, partners and/collaborators and of these 33 have a relationship of one of these types with national, regional or local public authorities;
- 10 websites disclose a relationship with Il Ministero per i Beni e Le Attività Culturali (Ministry of Culture) and of these one discloses a

⁶¹ Festival Cinema Ambiente, www.cinemambiente.it (accessed 15/05/2013), which records the patronage of the Ministero dell'Ambiente and the Ministero dell'Istruzione dell'Università e della Ricerca; Festival Internazionale del Cinema d'Arte, <http://www.festivalcinemadarte.it/> (accessed 05/07/2013), which records a relationship with the the Senato della Repubblica, Presidenza del Consiglio dei Ministri, Ministero del Sviluppo Economico and Ministero del Interno; Festival del Cinema Latino Americano Trieste, www.cinelatinotrieste.org (accessed 16/05/2013), which records the patronage of the Ministero degli Affari Esteri; Magma – Mostra di cinema breve, www.magmafestival.org (accessed 20/05/2013), which records the support of the Dipartimento per lo Sviluppo e La Coesione Economica (Ministero dello Sviluppo Economico); MedFilm Festival – Cinema del Mediterraneo a Roma, www.medfilmfestival.org (accessed 14/05/2013), which records a relationship with the Ministero delle Giustizia & the President of the Republic of Italy; N.I.C.E New Italian Cinema Events, www.nicefestival.org (accessed 20/05/2013), which records the sponsorship of the Ministero degli Affari Esteri; Roma Independent Film Festival, www.riff.it (accessed 21/05/2013), which records the Ministero degli Affari Esteri as an institutional partner; Rome Film Festival, www.romacinemafest.it (accessed 21/05/2013), which records the Ministero dello Sviluppo Economico as an institutional partner; SalinaDocFest – Festival del documentario narrative, www.salinadocfest.org (accessed 21/05/2013), which records the patronage of the Senate of the Italian Republic & of the Ministero dell'Ambiente e della Tutela del Territorio e del Mare; Senza Frontiere/Without Borders Film Festival, www.withoutbordersfilm.org (accessed 05/07/2013), which records a relationship with the Presidenza del Consiglio dei Ministri and the Ministro degli Affari Esteri.

⁶² See Appendix 1.

⁶³ Generally under the auspices of the Direzione Generale per il Cinema, www.cinema.beniculturali.it.

⁶⁴ See Appendix 1.

relationship with another public or political authority at the national level;⁶⁵

- one website discloses a relationship at the national level only with the Italian Republic;⁶⁶
- 33 websites disclose a relationship with regional and/or local (provincial and/or commune) public authorities.

This level of public institutional relationship with arts festivals and, perhaps in particular, the marked level of involvement of Il Ministero per i Beni e Le Attività Culturali, suggests that public institutions regard arts festivals as having some particular public or community value. It does not seem unreasonable to characterise this as being a cultural heritage value. Nor would it seem unreasonable to regard the festival in question as being important in this respect from the perspective of its specific location (national, regional, provincial or local). This importance of this issue will be subject to further examination in the context of this project in relation to the question of whether the cultural heritage value of arts festivals could be protected as a form of geographical indication.

2.3.3 Ticket sales

This project has not collected specific information on the percentage of funding of the festivals under consideration that has been obtained from ticket sales. It is noted, however, that the Euro-Festival Project found, unsurprisingly, that ticket sales were less significant as a form of funding for festivals funded by way of the subsidy model than for those funded by the mixed business model.⁶⁷ As already noted, this Euro-Festival Project concluded that the former type of funding had effects on the balance of aesthetic and commercial logic characterising the festival.⁶⁸ However, for the purposes of this project there is inadequate information on the question of how this differing balance might relate to the cultural heritage credentials of any given festival.

The question as to whether support from the public in the form of ticket sales affects cultural heritage credentials must be regarded as having a similarly inconclusive answer. Given the working definition of cultural

⁶⁵ Women's Fiction Festival, Festival internazionale di narrative femminile, www.womensfictionfestival.com (accessed 27/05/2013), which records the Italian Republic & the Ministero per Le Pari Opportunità (Ministry of Equal Opportunities) in its list of sponsors & partners.

⁶⁶ Primavera dei Teatri, www.primaveradeiteatri.it (accessed 17/06/2013), which records the contribution of the Italian Republic.

⁶⁷ See section 2.2 above; & n 6 *supra*.

⁶⁸ See section 2.2. above; & n 15 *supra*.

heritage that has been employed by this project,⁶⁹ it would be perverse to suggest that support from the public, or from a community, in the form of ticket purchases is irrelevant. In particular, support of this type from an identifiable community, whether this community is local⁷⁰ or is defined by participation in a particular artistic or cultural activity,⁷¹ has some salience in this context. Nevertheless, it seems important to note that when the public or members of a community purchase tickets to attend arts festivals or events at arts festivals they do so as private individuals. Where such private individuals are members of a particular community it might be reasonable to speculate – although not more – on the relationship between their motives for purchasing a ticket and their membership of that community. However, in general, it is impossible to know the motivations of a member of the public when they purchase a ticket – apart from the obvious fact that it is likely that they wish to enjoy themselves at a particular event.

3. Festival audience

3.1 Theoretical starting point

The second aspect of the proposed taxonomy of festivals that is under consideration in this working paper is the suggested distinction between festivals “aimed at a professional audience” and those aimed at the general public. The suppositions upon which this question was based are similar to those informing the publicly funded/private funded question considered in section 2 above. These suppositions were:

- (a) that a “professional” audience might imply a greater concern with intellectual property rights; and
- (b) the essentially “public” nature of the concept of cultural heritage⁷² would seem to suggest that only arts festivals aimed at the general public, or a section of the general public, are likely to be considered cultural heritage institutions.

The research, however, suggests that the distinction between arts festivals aimed at “professional” as opposed to public or community audiences is problematic for reasons examined in more detail below in section 3.2. This means that there is little point in examining the first supposition informing this putative distinction. However, in light of the conclusions

⁶⁹ See section 2.3 above.

⁷⁰ For an example of a description of such a local community, see A L Kaeppler, “Pacific Festivals & Ethnic Identity” in A Falassi (ed), *Time Out of Time: Essays on the Festival* (Albuquerque: University of New Mexico Press, 1987) 162-170.

⁷¹ For an example of a description of such a cultural community, see A K Gillespie, “Folk Festival & Festival Folk in Twentieth-Century America” in Falassi, n 70 *supra*, 152-161.

⁷² See Working Paper 2, n 1 *supra*, section 7.2.3.

of this project on the essentially public or community nature of cultural heritage, some comments are made in section 3.3 below on the broader issue of degrees of openness and closure of arts festivals and their implications with respect to the question of cultural heritage credentials.

3.2 Distinguishing between professional and public

There are two difficulties in distinguishing between festivals aimed at a professional audience and those aimed at the public or a section of the public constituting a community. The first is simply a question of definition. The second is that the hypothesis motivating the distinction, that what is aimed at a professional audience has a private quality that is at odds with the conclusion of this project that cultural heritage has an inherently public or community quality, does not hold water.

So far as the first issue of definition is concerned, of the arts festivals studied in this project,⁷³ one that might best appear to fit the description of being “aimed at a professional audience” is the Cannes Film Festival. This is because the screenings and other events are not open to the general public; it is an industry event.⁷⁴ On the other hand, there is an obvious way in which the Cannes Festival is, in fact, “aimed at the public” because it is clear that one of its functions is promotion of films and of the film industry to the cinema-going public. This is evidenced not only by the vast hype generated around the films and film stars, but also by the related fact that the one place at Cannes at which the general public are welcome is as spectators of its famous *croisette*.⁷⁵

While the Cannes Festival is perhaps the clearest example of a festival aimed at a professional audience, it is possible to identify other examples in the sample of festivals under consideration that may fall within this definition. This is particularly true in relation to other major film festivals, such as La Mostra di Venezia,⁷⁶ the Rome Film Festival⁷⁷ and the Torino Film Festival.⁷⁸ In fact, in the protracted dispute that preceded the appointment of Marco Müller (previously the director of La Mostra di

⁷³ See Working Paper 2, n 1 *supra*, Appendices 1-3.

⁷⁴ See J Segal & C Blumauer, “Cannes: A French International Festival” in J Segal & L Giorgi (eds), n 8 *supra*; L Mazdon, “The Cannes Film Festival as Transnational Space” *Post Script*, 2006, Volume 25, No 2, 19-30; <http://eprints.soton.ac.uk/46231/1/2653480.pdf>; Turan, n 13 *supra*, 13-30.

⁷⁵ Mazdon, n 74 *supra*; Segal & Blumauer, n 74 *supra*; Turan, n 13 *supra*.

⁷⁶ Mostra Internazionale d'Arte Cinematografica di Venezia, www.labiennale.org, accessed 20/05/2013.

⁷⁷ Festival Internazionale del Film di Roma, www.romacinemafest.it, accessed 21/05/2013.

⁷⁸ www.torinofilmfest.org, accessed 21/05/2013.

Venezia) to the directorship of the Rome Film Festival,⁷⁹ and the associated argument over the timing of this festival,⁸⁰ one of the points that was repeatedly made in the Italian press was the importance of all three festivals (and the system of Italian film festivals in general) in exposing and promoting the Italian film industry.⁸¹ Bearing in mind that securing international distribution is essential to the promotion of a film or a national film industry, these festivals must be regarded as being to some extent aimed at a professional audience composed of the international film distribution industry. It is also undoubtedly the case that, like any significant film festival, these festivals provide the opportunity for industry networking. Nevertheless, it also completely clear that these festivals are aimed at the public and that the participation of the public is crucial to their operation and success.⁸² The 2012 Rome Film Festival, for example, in addition to having a section dedicated to recent Italian films (*Prospettive Italia*) and a section on Italian films from the past (*Retrospettiva: Cinema Espanso 1962-1984*), the usual section of films in competition (*Concorso*) and out of competition (*Fuori Concorso*), had a series of public events (including special sessions devoted to the development of the film industry in Rome) (*Eventi*), a

⁷⁹ See, eg, “Zingaretti-Polverini ‘Nomina a gennaio’”. Il Pd: ‘Trasparenza’”, *la Repubblica*, 29 December 2011, p IX; A Finos, “Festival di Roma, ora nel mirino la poltrona del presidente Rondi”, *la Repubblica*, 30 December 2011, p 49; F Montini, “Opzione Müller, I dubbi del cda ‘Non è adatto al Festival di Roma’”, *la Repubblica*, 19 January 2012, p XIII; M Favale, “Festival del cinema, è fumata nera su Müller”, *la Repubblica*, 20 January 2012, p XI.

⁸⁰ “Festival, Fassino ad Alemanno: ‘Rispetta gli accordi sulle date’”, *la Repubblica*, 27 February 2012; F Montini, “Festival, ecco l’ultimo piano di Müller: Due date e un tendone davanti al MAXXI”, *la Repubblica*, 25 April 2012; D Banfo, “Fassino: Una scelta insensate – Müller non rispetta le regole”, *la Repubblica*, 5 May 2012; D Longhin, “Torino si appella al governo nella ‘guerra’ dei film festival”, *la Repubblica*, 6 May 2012; D Longhin, “Tff, intervenga Ornaghi”, *la Repubblica*, 6 May 2012; “Tff, Roma conferma le date – Alemanno: ‘Non c’è concorrenza’”, *la Repubblica*, 7 May 2012; D Longhin, “Roma torni alla data originaria”, *la Repubblica*, 7 May 2012; D Longhin, “Tff, incontro-duello tra Amelio e Muller”, *la Repubblica*, 8 May 2012; D Longhin, “‘Guerra del cinema’: Roma non cambia le date”, *la Repubblica*, 9 May 2012; “Festival Roma, approvati contratti e budget – la manifestazione dal 9 al 17 novembre”, *la Repubblica*, 9 May 2012; A Finos, “Müller: ‘Star, auditorium e opera cult il mio festival senza rivoluzioni’”, *la Repubblica*, 10 May 2012; D Longhin, “Nespolo: Si tengano la loro passarella – la vera festa sarà qui”, *la Repubblica*, 10 May 2012; D Longhin, “Festival del Cinema, Roma non sposta le date”, *la Repubblica*, 10 May 2012; L Conca, “FilmFest, polemica sulle date – sindaco chiede incontro a Ornaghi”, *la Repubblica*, 13 May 2012.

⁸¹ Eg, C Caroli, “Barbera, un uomo e due poltrone dalla Mole al Festival di Venezia” *la Repubblica*, 28 December 2011; “Festival, Fassino ad Alemanno: ‘Rispetta gli accordi sulle date’”, *la Repubblica*, 27 February 2012; D Banfo, “Fassino: Una scelta insensate – Müller non rispetta le regole”, *la Repubblica*, 5 May 2012; D Longhin, “Torino si appella al governo nella ‘guerra’ dei film festival”, *la Repubblica*, 6 May 2012; D Longhin, “Tff, intervenga Ornaghi”, *la Repubblica*, 6 May 2012; A Finos, “Müller: ‘Star, auditorium e opera cult il mio festival senza rivoluzioni’”, *la Repubblica*, 10 May 2012.

⁸² See, eg, Working Paper 2, n *supra*, section 7.2. See also, eg, F Giuliani, “Il Festival secondo Müller: ‘Da Cinecittà a Massenzio cinema per ogni spettatore’”, *la Repubblica*, 29 December 2011, p IX; F Montini, “Müller: ecco il mio festival – Cinque mega film e più fondi”, *la Repubblica*, 7 September 2012, pp I & IX; R Nepoti, “La Sfida dei Festival”, *la Repubblica*, 24 November 2012, p 50.

section on international cinema d'autore (*Cinemaxxi*), and a section called *Alice nella Città*, dedicated to the juvenile cinema going public.⁸³

Returning to the Cannes Film Festival as the clearest example of a festival putatively aimed at a professional audience, this festival also exposes the second difficulty, identified above, with the attempt to distinguish between arts festivals aimed at a professional audience and those aimed at the general public. Specifically, the suggestion that, even if an arts festival is aimed at a professional audience, this endows it with a private quality rather than a public or community quality is arguably incorrect. Sticking with the Cannes Festival as an example, there are at least two groups of questions that are worth asking about its public or communal nature. The first is what the word “communal” should be taken to mean here and whether a professional community counts? The second group of questions focus on the festival as a means of “being together”. Even if the festival events are closed to the general public, the presence of the film community in Cannes in a particular period of time, along with the opportunity for public spectacle provided by the *croisette*, suggest a communal element that is more public than private in nature. It is also the case that the presence of the film community and of the public in a limited space for a limited time - this “being together” which is one of the elements of a festival⁸⁴ – suggests a communal nature that is at odds with the idea that Cannes is a private affair. In the end, while affirming the requirement that to have the quality of cultural heritage a festival must have a public or communal nature, doubts must be raised about whether a festival, like the Cannes Festival, which is aimed at a professional audience necessarily lacks such a nature.

3.3 Openness and closure?

Bearing in mind the definition of an arts festival that has been adopted for the purposes of this project, it might be said that in one sense all arts festivals involve a degree of closure because they are bounded in time and in space.⁸⁵ In another sense, festivals involve an openness that is a consequence of the fact that they represent a suspension or escape from

⁸³ See 7th *Festival Internazionale del Film di Roma, Guida e Programma* (October 2012). See also F Montini, “Festival, film d'autore e poco glamour”, *la Repubblica*, 9 November 2012, p XXII; F Montini, “Con Prospettive Italia aiuteremo gli esordienti”, *la Repubblica*, 9 November 2012, p XXII; F Montini, “La vita alla Sapienza e Verdone: un tuffo nelle atmosphere romane”, *la Repubblica*, 9 November 2012, p XXIII.

⁸⁴ See Working Paper 2, n 1 *supra*, section 7.1.1.

⁸⁵ See Working Paper 2, n 1 *supra*, section 7.1.1.

the quotidian. For example, as noted in Working Paper 2,⁸⁶ commentators have described the festival variously as: a space of openness, de-territorialization and exchange;⁸⁷ part of the “public sphere”;⁸⁸ a site of democratic debate and transnational identifications;⁸⁹ an “interpretation of cosmopolitan community”;⁹⁰ and, an “apolitical no-man’s land”.⁹¹ This interplay between openness and closure is well captured by Abrahams, who observes:

Festivals seize on open spots and playfully enclose them. Spaces are found and are invested with the meaning of the moment and the power of the occasion ... Festivals thus draw their own boundaries for the occasion and redraw the boundaries of the host community, ironically establishing themselves in areas that, in the everyday world, have their own boundaries....[179] Openness, central to our experience of festival, is temporal as well as spatial.⁹²

Abrahams continues:

Festivals are ultimately community affairs. Indeed, they provide *the* occasion whereby a community may call attention to itself and, perhaps more important in our time, its willingness to display itself openly. It is the ultimate public activity, given its need for preparation and coordination of effort, and its topsy-turvyness, in which many of the basic notions of community are put to test.⁹³

Sometimes, however, the importance of a particular community in relation to a particular festival calls for a type of closure that is different in nature to the closure that comes from the boundedness of festivals in time and space, which as Abrahams describes well,⁹⁴ is in constant interaction with the openness of festivals. The example of the Cannes

⁸⁶ Note 1 *supra*, section 7.1.1.

⁸⁷ S Nordmann, “A History of Cultural Festivals in Europe” in Segal & Giorgi (eds), n 8 *supra*, 19-29, at 28.

⁸⁸ L Giorgi, “Between Tradition, Vision and Imagination: Literature(s) in Search of a Festival” in Segal & Giorgi (eds), n 8 *supra*, 30-52; M Sassatelli, “Public Culture, Cosmopolitanism and Festivals” in M Sassatelli (ed), *European Public Culture & Aesthetic Cosmopolitanism* (EURO-FESTIVAL Project: European Arts Festivals and Public Culture, October 2008), <http://www.euro-festival.org/publications.html>), 15-40.

⁸⁹ Sassatelli, n 88 *supra*.

⁹⁰ Sassatelli, n 88 *supra*, at 25.

⁹¹ Jean Cocteau quoted in Segal & Blumauer, n 74 *supra*, at 53.

⁹² R D Abrahams, “An American Vocabulary of Celebrations” in Falassi (ed), n 70 *supra*, 173-183, at 178.

⁹³ Abrahams, n 92 *supra*, at 181. See also K De Bres & J Davis, “Celebrating Group and Place Identity: A case study of a new regional festival” (2001) 3(3) *Tourism Geographies* 326-337.

⁹⁴ Text acc n 92 *supra*.

Film Festival represents one version of a different type of closure.⁹⁵ Another example of closure with respect to the festival audience, might be festivals that charge for admission or for tickets to particular festival events. This is, admittedly, a problematic observation in the context of this project. The empirical research tends to reinforce the importance of ticket sales in the context of the funding structure of many festivals, which would simply not exist without the money coming from ticket sales.⁹⁶ The research also suggests that, in general, where festivals are not free they are also not prohibitively expensive to attend – efforts are generally made to keep down ticket prices on the basis that this is important, if not essential, for securing broad community support. Nevertheless, it seems difficult to escape the conclusion that a free festival is essentially more inclusive, from the point of the public as audience, than one at which tickets must be purchased.

Some festivals also use another type of closure, not with respect to the audience but rather in relation to the festival protagonists, such as the performers, artists and management of the festival. This type of closure is frequently a consequence of the desire to reinforce the community identity of the festival. Kaeppler, for example, describes this phenomenon in her study in the 1980s of three festivals in the Pacific region: the South Pacific Festival of the Arts, the Tiurai of French Polynesia, and the Merrie Monarch Festival in Hawai'i,⁹⁷ all of which are still in operation. In relation to the third South Pacific Festival of the Arts (Papua New Guinea, 1980),⁹⁸ she observes:

It was hoped that the South Pacific Festival of the Arts would be instrumental in preserving old traditions as well as fostering new productions based on these old traditions but appropriate in the modern world. Another aim was intercultural understanding and lasting friendships between individuals who inhabit different cultural worlds ... Outside observers have questioned the wisdom of using the arts to foster political aims, but Pacific Islanders have found that these are noncontroversial activities making it possible to meet on neutral ground and form friendships that might be useful elsewhere. It is a place where cultural diversities and

⁹⁵ It is not difficult to find a variety of examples, where some degree of closure is present. For an example of another type of closure, see D Eder, S Staggenborg & L Sudderth, "The National Women's Music Festival: Collective Identity and Diversity in a Lesbian Feminist Community" (1995) 23 *Journal of Contemporary Ethnography* 485-515; & J Gamson, "The Organizational Shaping of Collective Identity: The Case of Lesbian and Gay Film Festivals in New York" (1996) 11(2) *Sociological Forum* 231-261.

⁹⁶ See sections 2.2 & 2.3.3 above.

⁹⁷ Kaeppler, n 70 *supra*, 162-170.

⁹⁸ This festival, which takes place every four years, has been re-named the Festival of Pacific Arts. It last took place in the Solomon Islands in 2012.

similarities are explored on a grass-roots level; the festival is a celebration of island brotherhood but separate ethnic identity carried out in an atmosphere of sharing.⁹⁹

In relation to the Tiurai, she notes that it is:

a typical Polynesian mixture which institutionalizes the love/hate relationship between the colony and the colonizer. Ostensibly celebrating the storming of the Bastille and the revolution that made France what it is today, the Tahitians have their own revolutionary reasons for wishing to be free from France as it is today ... The Tahitians feel they must at all costs maintain their ethnic identity in spite of being considered simply an overseas part of greater France.¹⁰⁰

She also identifies this same relationship to the pressure of Western influence in the Merrie Monarch Festival:

... Hawaiian festivals seem to celebrate the traditional ambivalence between unrelated Hawaiian groups – a modern emergence of the traditional jealousies among chiefs of warring lines. But this, too, is a form of ethnic identity – and identity that separates Hawaiians (and would-be Hawaiians) from the larger society whose values are primarily Western ...¹⁰¹

In relation to these three festivals studied by Kaeppler, Falassi writes:

The discussion of these prominent South Pacific celebrations gives a wide variety of references for the understanding of new festivals and their principal goals, namely communicating ethnic identity through the staging of events in a multicultural social setting; preserving ethnic identity while updating folklore to meet the challenge of Western culture and postindustrial economics; and furthering political unitary action from a common situation of ambivalence toward the ex-colonizers.¹⁰²

All these comments, of course, repeat arguments that have been made by Indigenous peoples for special protection of their traditional culture and knowledge on the basis of their particular post-colonial experience and

⁹⁹ Kaeppler, n 70 *supra*, at 165.

¹⁰⁰ Kaeppler, n 70 *supra*, at 167 (footnote omitted). Kaeppler identifies a similar love/hate relationship as also underpinning the South Pacific Festival of the Arts, noting that something that the various societies of the South Pacific “have in common is the colonial experience and the love/hate relationship that has emerged with the colonizing power in the wake of efforts toward independence”: *ibid.*, at 164.

¹⁰¹ Kaeppler, n 70 *supra*, at 169.

¹⁰² Falassi, n 70 *supra*, at 163.

their need to preserve their identity in the light of this experience.¹⁰³ (Claims based on these arguments now find expression in, amongst other places, the United Nations Declaration on the Rights of Indigenous Peoples of 2007.)¹⁰⁴ In these circumstances, and bearing in mind that arts festivals are a showcase of culture and a form of cultural heritage,¹⁰⁵ it is not surprising that arts festivals of Indigenous peoples are subject to forms of special closure that might not apply outside the Indigenous context. For example, in the WIPO Report, *Intellectual Property Issues and Arts Festivals: Preparing for the 11th Festival of Pacific Arts*,¹⁰⁶ which relates to the most recent version of the South Pacific Festival of the Arts held in the Solomon Islands in 2012, a number of recommendations are made to ensure a level of closure that will protect the identity and integrity of the relevant communities. The Report reflects an understandable concern about the cultural authenticity of performers and exhibitors.¹⁰⁷ It also notes the well-known limitations of intellectual property laws in protecting traditional knowledge and cultural expressions and recommends the development of a new legislative regime in this respect.¹⁰⁸ Effectively, this is a call for an enhanced level of closure¹⁰⁹ with respect to the use and dissemination of the performances, products and other material produced as part of the festival proceedings. It is not clear how this enhanced level of closure would relate to the arguments made in Working Paper 2 of this project that the festival should be regarded as a rupture in legal space.¹¹⁰ To the extent that it relates to the use and dissemination of festival activities outside the space of the festival itself¹¹¹ it appears to present less challenge. However, to the extent that it might impose further legal restraint or closure inside the space of the festival, then the proposal for a super-added legal regime for traditional knowledge and cultural expressions runs counter to the idea of a rupture in legal space. The question then becomes whether or not the particular circumstances of such festivals, as

¹⁰³ They also raise some of the questions that have been matters of dispute amongst Indigenous peoples, such as the use of the expression “folklore”: see further, WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, “The Protection of Traditional Cultural Expressions: Draft Articles” (WIPO/GRTKF/IC/22/REF/FACILITATORS TEXT, 13 July 2012).

¹⁰⁴ GA Res. 61/295 (UN Doc. A/61/L.67 and Add.1), adopted on 13 September 2007. See esp, Arts 11, 12, 13 & 31.

¹⁰⁵ See Working Paper 2, n 1 *supra*, section 7.2.3.

¹⁰⁶ T Janke, *Intellectual Property Issues and Arts Festivals: Preparing for the 11th Festival of Pacific Arts, Solomon Islands 2012* (Geneva: World Intellectual Property Organization, 2009).

¹⁰⁷ See, eg, n 106 *supra*, section 3.7.

¹⁰⁸ Note 106 *supra*, section 4.2.

¹⁰⁹ That is, an enhanced level of closure with respect to that which is supplied by the application of intellectual property laws in general, as to which see Working Paper 2, n 1 *supra*, sections 7.2.2 & 7.3.

¹¹⁰ Working Paper 2, n 1 *supra*, section 7.4.

¹¹¹ As to which, see Working Paper 2, n 1 *supra*, section 7.2.1.

noted above, should be regarded as distinguishing them from other arts festivals.

4. Commercial or creative?

4.1 Theoretical starting point

The third aspect of the proposed taxonomy of festivals that is under consideration in this working paper is the suggested distinction between festivals that have a commercial purpose and those that aim to generate creative synergies within the space of the festival. The idea that it would be useful to make such a distinction was provoked by the following suppositions:

- (a) Cultural/creative production that takes place during the festival as event should be distinguished from that which takes place before the festival because only the former is part of the rupture in space and time represented by the festival. However, some subtlety of approach is required here as cultural/creative production taking place prior to the festival but exclusively for the purposes of generating creative or productive interactions during the festival may differ from other types of pre-festival creative or cultural production.¹¹²
- (b) In order to draw such a distinction, it is necessary to map the “space” of the festival in time and in place. In terms of this research project, this process of mapping is linked to two other key ideas: first, in order to make a claim for at least some types of arts festivals as cultural heritage institutions then it is necessary to identify which types of arts festivals and give them some boundaries; and, secondly, if some types of festivals are cultural heritage institutions then this might reflect on the nature of the legal regime and legal relations that govern the space of the festival.
- (c) Focussing on festivals that generate creative or productive synergies within the space of the festivals is relevant in capturing the role intellectual property rights within that space. This is important in the context of this project because the project aims to consider two important issues about the intellectual property regime: first, whether the intellectual property regime, especially

¹¹² See, eg, A O’Grady & R Kill, “Environments for Encounter and the Processes of Organizing for Interactivity and Performative Participation within the Festival Space”, Conference on *Visuals and Performativity: Researching Beyond Text* (Segovia, May 2011) [on file with author]; and see further the discussion in Working Paper 2, n 1 *supra*, section 7.2.1.

copyright, is equipped to deal with dynamic creative relations; and, secondly, the question of whether intellectual property law should invade this space at all and, if not, whether some other legal framework that facilitates dynamic creative relations needs to be put in place.

The empirical and theoretical research conducted for the purpose of this project brings some of these suppositions and a number of the assumptions underpinning them into question. Specifically:

- It is difficult, if not impossible to distinguish between arts festivals having a commercial purpose and those that aim to generate creative synergies within the space of the festival.
- While it is not necessarily difficult to distinguish between the type of creative or cultural production taking place before a festival but solely for the purposes of the festival, and that taking place before the festival but not relating solely to the festival, the distinction has limited importance. Its importance lies only in the fact that the former may perhaps be considered as being part of the space of the festival – and therefore, in a certain theoretical sense, not actually taking place before it (just to make things more complicated) – with the result that any legal suspension within the space of the festival may apply to it.
- It is also necessary to consider the relevance of post-festival creative or cultural production that is a consequence of creative synergies generated at the festival.
- It is not clear that the cultural heritage credentials of a festival are dented by the fact that the festival might be characterised as tending towards the commercial, or having a strong commercial emphasis.
- While the connection between creative and productive synergies within the festival space and the possible inappropriateness of the intellectual property regime within that space is not brought into question in this section of the paper, the significance of the point in the present context is elusive precisely because the difference between arts festivals that have a commercial function and those that have a creative function is also elusive.

In the following sections of this working paper each of these points are considered in more detail.

4.2 Commercial versus creative

The first problem with this distinction is that it is unclear that it is, in fact, a real distinction. It implies that what is commercial is not creative and vice versa, which is not an easily defensible position even before an

interrogation of the meaning of expressions like “commercial” and “creative”. In the festival context, one possible meaning of commercial is that the festival is intended primarily as an opportunity to market or display so-called cultural products. In other words, festivals falling within what Gallina has described as the “window” category.¹¹³ As was argued in Working Paper 2, in reality it is rare (if it happens at all) for any festival to fit squarely within Gallina’s “window” category,¹¹⁴ in other words to be only a marketing event or an event to showcase cultural products for some other purpose. Certainly, however, film festivals in particular, tend towards this categorization. As has already been noted above, many film festivals have an important role in showcasing their films for marketing and commercial distribution purposes, but the argument here is that they also transcend this function. This is partly because film festivals rarely confine themselves just to the showing of films. Instead, they have all sorts of other events that relate to the practice of film-making. It is certainly also the case that film festivals also have other social, political and economic agendas. As Appendix 4 to Working Paper 2¹¹⁵ attempts to show, it is possible to categorise festivals by the social, political and economic themes that they address.¹¹⁶ In other words, these festivals are interested in promoting and/or exhibiting creativity in the arts in relation to some particular subject matter. Working Paper 2 proposes a categorisation of the festivals studied in this project according to the following themes: environment, human rights, gender, local culture, cultural diversity, heritage, role of technology in creative practices, creative practice across different categories of copyright works, artistic innovation, and independent production. Film and video festivals are well-represented in all these categories. All this suggests that, while film festivals do not usually involve the sort of creativity through which films are actually made in the course of the festival,¹¹⁷ they nevertheless promote creative interactions that are important to the process of film-making and important to the way in which creativity in film-making is capable of addressing themes of social, political and economic importance. These interactions also include the

¹¹³ M Gallina, *Organizzare Teatro* (Milan: FrancoAngeli, 2003), cited in M-C Muti, *The Phenomenon of Art Festival – An Empirical & Legal Analysis* (Tesi, Università Commerciale “Luigi Bocconi”, Facoltà di Economia, Corso di Laurea in Giurisprudenza, 2010) [on file with author], at 42ff. See further, Working Paper 2, n 1 *supra*, section 7.1.2.

¹¹⁴ See Working Paper 2, n 1 *supra*, sections 7.1.2 & 7.2.3.

¹¹⁵ Note 1 *supra*.

¹¹⁶ See also Turan, n 13 *supra*, who identifies the Cannes Festival, the Sundance Festival & ShoWest as being “festivals with business agendas” (although, as will be argued, “business” does not necessarily just mean marketing). However, he also identifies four of the film festivals that he studies (FESPACO, Havana, Sarajevo & the Midnight Sun Film Festival) as having “geopolitical agendas” and three (Pordenone, Lone Pine & Telluride) as having “aesthetic agendas”.

¹¹⁷ As might, eg, happen at a theatre, music, poetry or dance festival.

commercial aspects of this process. The Cannes Film Festival is a particularly clear, but by no means isolated, example of this.¹¹⁸

However, the waters around the question of any attempted dichotomy between creative and commercial in the context of film festivals are further muddled by the fact that film festivals also promote creative interactions that are important to the process of film distribution. In the group of arts festivals studied in this project that were categorised as being concerned with independent production, all of the festivals are film festivals.¹¹⁹ One of the aims of these festivals is to give exposure not only to the considerable number of independently made films that have failed to find a distributor, but also to the problem of independent film distribution in general. This reflects the fact that the question of distribution, and the fact that there are so few avenues for distribution of independently made films, is a serious problem that affects the creativity of the film industry.¹²⁰ Accordingly, seeing the issue of distribution as a commercial rather than a creative one is to misunderstand the dynamics of the film industry and the extent to which commercial and creative issues are completely intertwined. The fact that, as I have argued in other places,¹²¹ the exclusive distribution arrangements that strangle independent film production are built on the back of the international copyright system does nothing to improve the credentials of that system in relation to the question of the promotion of creativity.

Moving away from film festivals does not alter the conclusion that attempting to draw a dichotomy between commercial and creative aims is problematic. Certainly, on a scale that rated the importance of commercial aims for a festival, film festivals would appear at the top end of the scale. (This must be taken to be related to the fact that of all forms of the creative arts, films are the most expensive to make.) There are also some types of festivals that would tend towards the lower end of such a scale. The most obvious examples of such festivals in the context of this project are found in the category of culture festivals.¹²² For example, story telling festivals,¹²³ busking festivals¹²⁴ and blogging festivals.¹²⁵

¹¹⁸ See further, Working Paper 2, n 1 *supra*, para 7.2.3.

¹¹⁹ See Working Paper 2, n 1 *supra*, Appendix 4.

¹²⁰ See Macmillan, n 18 *supra*. On the current dire situation with respect to film distribution in Italy & its impact on creativity in this sector in Italy, see eg L Palestini, “La Sacher di Moretti non distribuisce più”, *la Repubblica*, 6 May 2013.

¹²¹ See, eg, Macmillan, n 18 *supra*; & F Macmillan, “‘Are you sure/That we are awake?’: European Media Policy & Copyright” in K Donders, C Pauwels & J Loisen, *Handbook of European Media Policy* (The Hague: Palgrave Macmillan, 2013).

¹²² See the list Working Paper 2, n 1 *supra*, Appendix 3, & for an updated list, see Appendix 1 to this Working Paper.

¹²³ Eg, Festival di Storytelling – Raccontamiunastoria, www.raccontamiunastoria.com.

However, music festivals, theatre, dance, poetry, literary and visual art festivals all tend to have a noticeable commercial/marketing component, which (of course) varies from festival to festival.¹²⁶ There is nothing to suggest that the commercial aims of any of these festivals are in inverse proportion to their creative objectives.

4.3 Pre-festival creative or cultural production

Usually it is not difficult to say when, in temporal terms, a festival as an event starts and finishes.¹²⁷ Consequently, it is not particularly problematic to identify acts of creativity undertaken in relation to a festival before the commencement of the festival as event. As was argued in Working Paper 2, those acts are sometimes undertaken primarily or exclusively for the purposes of the festival as event.¹²⁸ Working Paper 2 cited O'Grady and Kill's study of the interactive performance piece, "The Heavenly Court of Madame Fantaisiste" by Urban Angels Circus,¹²⁹ at two UK music festivals, *Kendal Calling*¹³⁰ and *Bestival*,¹³¹ as an example of creative activity undertaken mainly for festival purposes. It is possible to distinguish this type of creative work from, for example, a film that is shown at a film festival or a novel presented at a literary festival or a painting presented at a festival of visual art. This is because these are examples of finished cultural products that have been produced for purposes that are wider than simply to be presented at a festival. Then there are other types of pre-festival creativity that have a more ambiguous relationship to festival creativity. In general these are all types of works that have been made before the festival and are performed at the festival, such as music, dance, theatrical works and, in some cases, the reciting of poetry. The presentation of these works at a festival is not necessarily the same as, for example, the presentation of a film at a festival because every performance of such works differs from every other performance and from the original recorded iteration of the work. It has to be admitted, however, that the line here is a rather fine one. It could, for example, be argued that the interactive nature of the film festival environment, as described in

¹²⁴ Eg, Ferrara Buskers Festival – Rassegna Internazionale del Musicista di Strada, www.ferrarabuskers.com.

¹²⁵ Eg, Blogfest, www.blogfest.it.

¹²⁶ And see further, eg, K Allen & P Shaw, *Festivals Mean Business: The Shape of Arts Festivals in the UK* (London: British Arts Festivals Association, 2000).

¹²⁷ And when it is, then the question of whether or not the event in question is a festival as defined in this project (see Working Paper 2, n 1 *supra*, section 7.1.1) arises.

¹²⁸ Working Paper 2, n 1 *supra*, section 7.2.1.

¹²⁹ See www.urbanangelscircus.com.

¹³⁰ See www.kendalcalling.co.uk/.

¹³¹ See www.bestival.net/.

Working Paper 2,¹³² means that even the festival presentation of a pre-made work like a film differs from that which takes place in the ordinary run of events at a cinema.

In the end it is questionable whether much turns on all these fine distinctions. At most it might be concluded, as was argued in Working Paper 2,¹³³ that acts of creativity or cultural production that occur prior to the festival as event, but are performed exclusively for festival purposes fall inside the boundaries of the festival as a form of suspension from the usual course of life and thus inside any suspension of the usual legal regime. However, it is also clear that as soon as the same acts are used to support creative activity outside the festival as event then they lose this quality. It seems more important to concentrate on creativity and cultural production that occurs within the temporal and spatial boundaries of the festival (that is, during the festival as event). From this point of view, the important conclusion of this project is that within their own temporal and spatial boundaries, arts festivals in general are characterised by acts of creativity and cultural production that are dependent on and related to prior cultural production but not necessarily the same as that prior cultural production.

4.4 Post-festival creative or cultural production

If festivals are, as argued above, characterised by creative and cultural synergies generated at the festival as event, then the next question would appear to be whether there is anything special about cultural or creative products that are generated after the festival as a result of those synergies. Attempting to indentify exactly what and to what extent subsequent cultural production is a consequence of festival activity appears to involve an even more subtle angelic form of dancing on a pin-head than that considered in the previous section. What might be said, however, without entering the realm of sublime distinction, is that cultural production evidently related to creativity taking place at the festival as event may be viewed as evidence of the cultural heritage credentials of the festival.

Since this section 4 of the Working Paper has a focus on the relationship between creativity and commerce in the festival environment, I return now to the example of the Cannes Film Festival in order to illustrate this point. Much was made in Working Paper 2 of the significance of the way in which special arrangements for facilitating contacts between production houses, which take place at the Cannes Festival, support

¹³² Note 1 *supra*, section 7.2.

¹³³ Note 1 *supra*, section 7.2.1.

creativity in the film sector.¹³⁴ Films, like Daniel Vicari's *Diaz: Don't Clean Up this Blood*, the making of which was possible only thanks to the persistence of its producer, Domenico Procacci, and his use of the special arrangements at Cannes, may be seen the product of the way in which the Cannes Film Festival functions as a cultural heritage institution. This function is also inherent in the history of the Cannes Film Festival, which is intimately tied in to the development of *cinema d'autore*.¹³⁵ It is inevitably the case that such products of the festival's cultural heritage function are subject to intellectual property rights and, bearing in mind that they relate to cultural production after the festival as event, no argument is made here for the suspension of the regime governing those rights.

4.5 Commerce and cultural heritage

Not only, as stated above, is it unclear that the cultural heritage credentials of a festival are dented as a result of having a strong commercial emphasis, it would be eccentric to suggest otherwise. Nothing in the definition of cultural heritage used in this project¹³⁶ would suggest a necessarily antipathetic relationship between cultural heritage and commercial orientation. Indeed, at a general level the strong connection between cultural heritage and the promotion of tourism, which is well-known (even if more infrequently acknowledged in academic writing) in relation to both tangible and intangible heritage¹³⁷ would suggest otherwise. So far as arts festivals are concerned, as has been argued above,¹³⁸ the fact that there is no sense in attempting to dichotomise creativity and commercial activity or in making a typology of festivals that depends upon such a distinction, strongly suggests that

¹³⁴ Note 1 *supra*, section 7.2.3.

¹³⁵ See Mazdon, n 74 *supra*; Segal & Blumauer, n 74 *supra*; Turan, n 13 *supra*.

¹³⁶ See Working Paper 2, n 1 *supra*, section 7.2.3.

¹³⁷ See, eg, D J Timothy, *Cultural Heritage and Tourism: An Introduction* (Bristol: Channel View Publications: 2011). Interestingly, the links between festivals and tourism are relatively well-recognised: see, eg, N Arnold, "Festival tourism: Recognizing the challenges; linking multiple pathways between global villages of the new century" in B. Faulkner, G. Moscardo and E. Laws (eds) *Tourism in the 21st Century. Reflections on Experience* (London and New York: Continuum, 2000); D Felsenstein & A Fleischer, "Local Festivals and Tourism Promotion: The Role of Public Assistance and Visitor Expenditure" [2003] *Journal of Travel Research* 41; S A King, "Blues Tourism in the Mississippi Delta: The Functions of Blues Festivals" (2004) 27(4) *Popular Music and Society* 455-475; B Maussier, *Festival management e destinazione turistica – I festival come nuove media della società post-industriale* (Milan: Hoepli, 2010); D O'Sullivan & M J Jackson, "Festival tourism: A contributor to sustainable local economic development?" (2002) 10(4) *Journal of Sustainable Tourism* 325-42; M Paola & R Grandinetti, *Città in festival: Nuove esperienze di marketing territoriale* (Milan: FrancoAngeli, 2009); D Picard & M Robinson, *Festivals, Tourism and Social Change: Remaking Worlds* (Clevedon: Channel View Publications, 2006); M Robinson, D Picard & P Long, "Festival tourism: Producing, translating, and consuming expressions of culture(s). Introduction." (2004) 8 *Event Management* 187-189; C Thrane, "Jazz Festival Visitors and Their Expenditures: linking Spending Patterns to Musical Interest" (2002) 40 *Journal of Travel Research* 281-286

¹³⁸ See section 4.2 above.

commercial aims do not interfere with cultural heritage credentials. Further, if this question is considered specifically in relation to the Cannes Festival, which offers a particularly useful example because it mixes a strong emphasis on protecting the heritage of *cinema d'auteur* while at the same time stimulating commercial relations that support further creativity in this sector,¹³⁹ then the pointlessness of suggesting that cultural heritage credentials are excluded by commercial objectives becomes clear. The cultural heritage credentials of a festival like Cannes do not lie in some notion of aesthetic, as opposed to commercial elements, but rather lies in the very co-existence of the two, which results in synergistic creative relations about all aspects of production of film.

4.6 Creativity, commerce and intellectual property

It was argued in Working Paper 2 that the origins of the copyright regime lie in market regulation and not in the protection of creativity.¹⁴⁰ These origins are reflected in the fact that the current regime of copyright, notwithstanding fragrant rhetoric to the contrary, concerns itself primarily with the protection of investment in the distribution of creative products and not substantially with the protection of creativity.¹⁴¹ Copyright is, however, completely adaptable to the context in which it finds itself. By this I mean to say that whether a festival tends more towards marketing discrete cultural products or more towards promoting synergistic creative relations within the space of the festival itself, copyright, as described in Working Paper 2,¹⁴² will be there. The traditional distinction that legal scholars make between existence and enforcement of intellectual rights may have some valence here, but in the end it is a matter of no concern to the copyright regime what the aims of the festival are – if it can latch onto something, it will.

As was argued in Working Papers 1¹⁴³ and 2,¹⁴⁴ the copyright regime has the capacity to interfere with synergistic creative relations and, therefore, is considered problematic in the context of this project. Geographical indications, however, which are generally treated by legal scholars as

¹³⁹ See also Working Paper 2, n 1 *supra*, section 7.2.3.

¹⁴⁰ Note 1 *supra*, section 7.1.3.

¹⁴¹ See, eg, R Towse, *Creativity, Incentive and Reward: An Economic Analysis of Copyright and Culture in the Information Age* (Cheltenham: Edward Elgar, 2001), esp chs 6 & 8; R. Towse (ed), *Copyright and the Cultural Industries* (Cheltenham: Edward Elgar Publishing, 2002); F Macmillan, “Public Interest and the Public Domain in an Era of Corporate Dominance” in B Andersen (ed), *Intellectual Property Rights: Innovation, Governance and the Institutional Environment* (Cheltenham: Edward Elgar, 2006). See further, Working Paper 2, n 1 *supra*, section 7.1.3.

¹⁴² Note 1 *supra*, section 7.2.2.

¹⁴³ F Macmillan, “Copyright, Creativity and Cultural Property Rights: The Case of Arts Festivals” (Working Paper 1, HERA “Cultivate Project”, 2013, <http://www.cultivateproject.dk/>).

¹⁴⁴ Note 1 *supra*, sections 7.1.3 & 7.4.

being a type of intellectual property, may have the capacity to sustain the festival as a community event.¹⁴⁵ This is because, in reality, they do not have the form of a traditional private intellectual property right but rather are a form of community right.¹⁴⁶ Bearing in mind the strong geographical associations of festivals¹⁴⁷ and the capacity of geographical indications to sustain something that appears to be close to the concept of *res universitatus*,¹⁴⁸ an important line of enquiry in this project is the possible application of this right in order to sustain the festival as a form of cultural heritage.

5. Relationship to copyright subject matter

5.1 Theoretical starting point

There are a number of questions in this project which relate to the question of the relationship between the subject matter of copyright and the process of cultural production and creativity which takes place within the space of the arts festival. First, the project seeks to examine the question how copyright relates to the creative process by considering the example of its operation in the space of the arts festival. Secondly, the

¹⁴⁵ See Working Paper 2, n 1 *supra*, section 7.4.

¹⁴⁶ In this context, it should be noted that considerable academic attention has been given to the role of geographical indications in protecting traditional knowledge and traditional cultural expressions: see, eg, N Aylwin & R Coombe, "Marks Indicating Conditions of Origin in Rights-Based Sustainable Development" in R Buchanan & P Zumbansen (eds), *Human Rights, Development and Restorative Justice: An Osgoode Reader* (Oxford: Hart, 2013); M Blakeney, "The Protection of Traditional Knowledge by Geographical Indications" in C Antons (ed), *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property in the Asia Pacific Region* (Wolters Kluwer, 2009), 87-108; R J Coombe & N Aylwin, "Bordering diversity and desire: using intellectual property to mark place-based products" (2011) 43 *Environment and Planning A* 2027-2042.

¹⁴⁷ Which are well encapsulated in the literature on festivals & tourism: see n 137 *supra*. See also, C Beauchamp & H Behar, *Hollywood on the Riviera: The Inside Story of the Cannes Film Festival* (New York: William Morrow & Co, 1992); G Bruce, *Festivals in the North: Story of the Edinburgh Festival* (London: Hale, 1975); M Crespi-Valbona & G Richards, "The Meaning of Cultural Festivals: Stakeholder Perspectives in Catalunya" (2007) 13(1) *International Journal of Cultural Policy* 103-122; K De Bres & J Davis, "Celebrating Group and Place Identity: A case study of a new regional festival" (2001) 3(3) *Tourism Geographies* 326-337; L Garcia & M Rúa, "Processing Latinidad: Mapping Latino Urban Landscapes Through Chicago Ethnic Festivals", (2007) 5 *Latino Studies* 317-339; K Jamieson, "Edinburgh: the festival gaze and its boundaries" (2004) 7(1) *Space and Culture* 64-75; Kaeppler, n *supra* (& see section 3.3 above); G McKay, *Glastonbury: a very English fair* (London: Gallanc, 2000); P M Messenger, "Caribbean festival arts" (1991) 15(2) *Museum Anthropology* 37-38; P Occhiuto, *Umbria e Jazz: Venticinque anni di musica* (Cinisello Balsamo: Silvana Editoriale, 1994); B Quinn, "Arts Festivals and the City" (2005) 42 (5/6) *Urban Studies* 927-943; S. Salvemini, I. Morganti, M. Nuccio, A. Rubini, *The Impact of the MITO Festival SettembreMusica in Milan: Profile for the Public and Repercussions for the City* (Milan: Skira/Egea, 2008); S. Salvemini, I. Morganti, M. Nuccio, G. Mangia, P. Canonico, G. Giordano, *Analisi degli impatti del Napoli Teatro Festival Italia*, Centro di ricerca ASK: Università Bocconi & Università Napoli, 2009; J W von Goethe, "The Roman Carnival" in *Goethe's Travels in Italy* (London: George Bell & Sons, 1883), 485-515, reprinted in A Falassi (ed), *Time out of Time: Essays on the Festival* (Albuquerque: University of New Mexico Press, 1987), 13-34.

¹⁴⁸ See further Working Paper 2, n 1 *supra*, section 7.4.

project is concerned with the effect of the uneven coverage of copyright in the festival space. This second question has two important dimensions. The first relates to the consequences of this uneven coverage for the process of creativity and cultural production within the space of the festival. The second dimension is concerned with the way in which this uneven coverage relates to the co-existence of copyright and cultural heritage rights within the festival space. The following sections of this Working Paper, investigate these issues in the light of the project's empirical enquiries. These enquiries illustrate that this fourth aspect of the proposed taxonomy has a particular importance for this project.

5.2 Copyright and the creative process

Working Paper 2 identified a number of aspects of copyright law that sit uncomfortably with rhetoric that associates copyright with the creative process, as follows:¹⁴⁹ copyright's focus on the final product, rather than the process of creativity; copyright's requirement for embodiment in material form; copyright's listing approach to the definition of things falling within its ambit with the result that it cannot easily deal with hybrid-works or with new artistic forms; copyright's need to identify an "author"; and, the uncertainties pervading the question of the right (if this exists) to use copyright protected works in the context of subsequent creativity. Each of these features of copyright law is now considered in more detail in the festival context. The argument here is not that these concerns about the relationship between copyright and creativity are unique to the festival environment, but rather that this environment provides a particularly fruitful example precisely because of its constriction in time and space and its suspension from the quotidian. However, based upon these exceptional qualities of the festival there may be an argument in favour of the proposition that there is also a need for an exceptional approach to the imposition of the copyright regime.

5.2.1 Product versus process

As was argued in Working Paper 2,¹⁵⁰ to the extent that any concept holds the list of copyright protected works together it is one derived from the rhetorical discourse of the Renaissance period. In the hands of modern copyright law, this is reduced to a focus on the production of the discrete "work" by a recognisable creator (or creators). Consequently, the growth in the twentieth century of forms of artistic practice based on the discourse of semiotics,¹⁵¹ which focus on the process rather than just the

¹⁴⁹ Working Paper 2, n 1 *supra*, sections 4.4 & 7.1.3.

¹⁵⁰ Working Paper 2, n 1 *supra*, section 7.1.3.

¹⁵¹ See J Stapleton, *Art, Intellectual Property & the Knowledge Economy* (Doctoral Thesis, Goldsmiths College, University of London, 2002), <http://www.jaimestapleton.info/download.htm>, ch 3.

product, have posed a particular problem for the protected subject matter of copyright. With or without an accompanying discourse of semiotics, much of the creative interactions that take place in the context of arts festivals are focussed on process rather than just product or, at least, not focussed entirely on product. This observation holds good, even for film festivals, which might be regarded as being less problematic with respect to copyright's requirement for a product precisely because they are focussed on the presentation of copyright-protected products (films). However, as has been argued above, the type of creative interactions that take place in the space of a film festival relate to film production but do not (usually) involve the actual making of a film. Similar observations might be made in relation to literature festivals. In both cases, the fact that some festivals offer workshops and master-classes, means that there is always the possibility that discrete works (products) are created.

Generally, arts festivals are live performative spaces. Sometimes the performances depend on the existence of a pre-existing copyright work, but the important point is that every live performance is different. Sometimes performances are highly interactive with the festival audience, in the sense that the audience determines the course of the performance.¹⁵² Other times, interaction comes from the audience's way of expressing its appreciation (or not) of a performance. Creative interactions also arise as a result of the fact that a range of different performances are, exceptionally, taking place in the same limited temporal and geographic space with the result that performances relate to each other in ways that would not ordinarily occur. All these things are a consequence of the fact that the festival constitutes a particular way of "being together" in the context of a suspension from the quotidian.¹⁵³ Such an environment is, by nature, at least as much focussed on the process of creation as it is on the end product of any such process.

All the arts festivals studied in this project claim to focus to some degree on the process of creativity.¹⁵⁴ Some have a particular and explicit concern with this process. This is generally the case, for example, with respect to those festivals identified in Working Paper 2 as being thematically concerned with the role of technology in creative practices and artistic innovation/cutting edgeness.¹⁵⁵ These festivals are concerned with both the process and the product of creativity, or perhaps it is more accurate to say that they do not recognise a distinction between the

¹⁵² See, eg, O'Grady & Kill, n 112 *supra*.

¹⁵³ See the discussion on defining arts festivals in Working Paper 2, n 1 *supra*, section 7.1.1.

¹⁵⁴ For a discussion of some of the forms that this focus takes, see section 4.2 above.

¹⁵⁵ See Working Paper 2, n 1 *supra*, Appendix 4.

two.¹⁵⁶ Copyright, by making this artificial distinction, interposes a legal regime within the space of the festival that does not reflect the creative practices that exist within that space.

5.2.2 Material form

This failure to reflect the creative practices that take place within the space of the festival is also evident in copyright's requirement that to be protected the product of creativity must be reduced to a material form. There are a number of obvious examples in the festival environment of creativity that is likely to fail this requirement. These include, but are certainly not limited to things like busking festivals¹⁵⁷ and story-telling festivals.¹⁵⁸ But these are only the obvious examples because their emphasis on oral culture, at the expense of written culture, makes them prime candidates for exclusion from the copyright regime. In reality, because festivals are oral and performative occasions, because they reflect a particular physical form of "being together",¹⁵⁹ a vast amount of festival activity is unlikely to be reduced to what copyright law considers a material form.

Some festival performances benefit from a type of de facto copyright protection as a result of the fact that the performance itself is based on a pre-existing work (literary, musical, choreographic and so on) that has been reduced to material form. Consequently, a reproduction of the performance through another live performance would be likely to be a breach of the copyright in the original work. It is also the case that a reproduction of the performance that involved recording it would, even if unauthorised, have the effect of reducing it to material form and thus

¹⁵⁶ In this sense, the question of product and process might be understood in the light of the distinct, but interweaving concepts *poesis* and *praxis*: "Poesis is teleological and spatial: it has a telos, a produce and endpoint. Praxis is a becoming, a temporal unravelling in the world. Such is the dancer's performance of a choreography or the actor's interpretation of a play. The dancer and the dance, the play and the acting cannot be prised apart. The success of the dance perfects the dancer and the virtuosity of the dancer presents the score in its ideal form": C Douzinas, *Philosophy & Resistance in the Crisis* (Cambridge: Polity, 2013), 163, citing H Arendt, *The Human Condition* (Chicago: Chicago University Press, 1998, 2nd ed).

¹⁵⁷ Eg, Ferrara Buskers Festival – Rassegna Internazionale del Musicista di Strada, www.ferrarabuskers.com (accessed 24/05/2013).

¹⁵⁸ Eg, Festival di Storytelling – Raccontamiunastoria, www.raccontamiunastoria.com, accessed 24/05/2013.

¹⁵⁹ See Working Paper 2, n 1 *supra*, section 7.1.1. So-called virtual festivals, where the "being together" is not physical but mediated through types of social networks, might be said to reduce everything that happens during the "festival" to a material form (as a digital record). However, it is unclear that such events fall within the definition of a festival for the purposes of this project. This leads to the speculation that an event where everything is reduced to copyright's material form is, by definition, not a festival. Such a speculation might lead to the conclusion that copyright is fundamentally out of place in the arts festivals environment (despite the fact that copyright subject matter defines or authorises the concept of "arts": see Working Paper 2, *ibid.*, sections 7.1.2 & 7.1.3).

satisfying this prerequisite for copyright protection.¹⁶⁰ However, also in this circumstance, where the performance was based on an existing work/text (literary, musical, choreographic and so on), copyright protection would relate to that work and not to the performance itself. If, on the other hand, the performance was completely spontaneous then its recording, authorised or unauthorised, would confer copyright protection on the performers in the script, music, lyrics dance and so on.

The fact that festivals are generally performative occasions also raises the question of the role of performers' rights, which are considered to be rights related to copyright.¹⁶¹ Under UK copyright law, for example, performers' rights in live performances are infringed by making an unauthorised recording of any substantial part of the performance, broadcasting any substantial part of a performance, making a recording of a substantial part of the broadcast of a live performance or copying a recording of a live performance.¹⁶² A visit to You Tube might be regarded as giving some indication of either the effectiveness of this regime or the tendency to enforce such rights. The point, however, in the current context is that even taking into account the points of attachment of copyright and performers' rights in the festival context, which is characterised a concentration of creative and performative activity in a limited space and time, there is still likely to be a great deal of performance-related creativity that is not captured by these rights.

5.2.3 Hybrid works and new artistic forms

Copyright law divides its protected subject-matter into discrete categories, as follows: literary works, dramatic works, musical works, artistic works, sound recordings, films, broadcasts and published editions. While copyright recognises that more than one of its protected subject matters can exist simultaneously in one creative work (for example, a film also encompasses a literary work and a musical work), there is no evidence that it applies to hybrid works, which cross the boundaries between the different categories of protected works. Nor is there much, if any, real scope in copyright law for the recognition of new artistic forms.¹⁶³

¹⁶⁰ See, eg, UK Copyright Designs and Patents Act 1988, s 3(2) & (3).

¹⁶¹ See Rome Convention for the Protection of Performers, Producers of Phonograms & Broadcasting Organisations of 1961 & WTO Agreement on Trade-Related Aspects of Intellectual Property Rights Art 14.

¹⁶² UK Copyright Designs and Patents Act 1988, ss 182 & 183.

¹⁶³ It is conceded that some types of protected subject-matter are defined in an inclusive and, thus, arguably open-ended way, eg the definitions of "literary work" & "dramatic work" in the UK Copyright Designs and Patents Act 1988, s 3(1), but this contributes little to copyright's ability to relate to new creative forms that transcend these categories.

Bearing in mind the argument made in Working Paper 2, that copyright has a relationship of constitution and/or authorisation with the wider understanding of what is comprised by the arts, it might be further argued that copyright's list of impermeable categories of protected subject-matter contributes to hardening the divisions between different types of creative works.¹⁶⁴ This sounds like an inherent restraint on creativity, and it is certainly one that many festivals in the studied sample explicitly seek to challenge. Working Paper 2 presents an alternative categorization of festivals.¹⁶⁵ Rather than being based on the traditional categories of copyright works, which is perhaps the most obvious way to categorise festivals and the way in which they generally categorise themselves, the alternative categorization is based on the themes that festivals claim to be addressing.¹⁶⁶ One of these categories relates to creative practice across different categories of the arts (that is, across different categories of copyright works). While this alternative categorisation is a rather loose one based upon my interpretation of material appearing on the festival website,¹⁶⁷ and unlike the categorisation based on traditional artistic (that is, copyright) works places some festivals in more than one alternative category, it is interesting to note that the longest list of festivals in my alternative classification relates to festivals concerned with creative practice across different categories of copyright works.¹⁶⁸

In addition to a category on creativity that deliberately challenges traditional categories of the arts, the alternative categorisation in Appendix 4 of Working Paper 2 also contains at least two other categories of festivals that are either focussed on, or might be very likely to have the effect of, challenging traditional categories of the arts. First, there is the alternative category that is concerned with the role of technology in creative practices;¹⁶⁹ and, secondly, festivals concerned with artistic innovation or “cutting edgness”.¹⁷⁰ In all, there is a marked tendency in the selected sample, for arts festivals to focus on new forms of creativity and/or creativity that deliberately challenges accepted (copyright) categories of artistic practice.

¹⁶⁴ Working Paper 2, n 1 *supra*, section 7.1.3.

¹⁶⁵ Note 1 *supra*, section 6 & Appendix 4.

¹⁶⁶ In this sense, these festivals might also be seen as offering their own alternative classification.

¹⁶⁷ And there maybe some researcher bias here, although I sought to eliminate it.

¹⁶⁸ There are 23 festivals in this list, which just beats the 22 festivals that appear in the alternative category of festivals concerned with cultural diversity: see Working Paper 2, n 1 *supra*, Appendix 4.

¹⁶⁹ There are 8 entries in this category, 5 of which also appear in the category concerned with creative practice across different categories of copyright works: see Working Paper 2, n 1 *supra*, Appendix 4.

¹⁷⁰ There are 17 entries in this category, 6 of which also appear in the category concerned with creative practice across different categories of copyright works & 2 of which also appear in the category concerned with the role of technology in creative practices: see Working Paper 2, n 1 *supra*, Appendix 4.

To this mismatch between copyright law and creativity in the arts festival context should be added copyright law's own confusion around the idea of creativity in the different categories of works that it protects. This has resulted in an inconsistent and uneven protection of creativity within the categories of copyright-protected works. For example, while a case might be made that the creativity in the look of the final copyright product is protected in relation to dance works (considered to be dramatic works in some copyright regimes)¹⁷¹ and in relation to "artistic works" (meaning some types of works of visual art),¹⁷² this does not seem to be true, at least in the United Kingdom, with respect to films.¹⁷³

5.2.4 Author versus multiple collaborators

As was argued in Working Paper 2, one of the consequences of the continuing influence of the rhetorical paradigm of creativity is copyright's insistence on a recognisable creator (or creators).¹⁷⁴ This concept of the creator is linked to that of the discrete work reduced to material form. In general, therefore, all of the issues raised above¹⁷⁵ in relation to the requirement of material form also impact on the question of who is the author of the work. This link between material form and the identification of copyright's "author" has the effect of excluding people who, in varying degrees of proximity, have contributed to the process of producing a copyright work. Although it is startlingly obvious that no creative work is produced out of nothing and that all creative works arise from the influence of particular creative traditions, copyright insists on identifying the creator, and thus copyright's "author" as the person (or persons) who reduces the work to material form. In many cases, of course, the creative influences on a particular copyright "product" might be considered relatively remote. However, in the particular "hothouse" environment of the festival, where as noted above the process of creativity is often as important if not more important than the product,¹⁷⁶ it may more frequently be the case that those who have made a significant and proximate contribution to the creative process are not recognised as authors of any final copyright product. This is particularly likely to be the case in relation to the types of festivals that concentrate on the

¹⁷¹ See, eg, the UK Copyright Designs and Patents Act 1988, ss 1(1)(a) & 3.

¹⁷² See, eg, the list in the UK Copyright, Designs and Patents Act 1988, s 4. On the UK approach to the protection of works of visual art, see further F Macmillan, "Is Copyright Blind to the Visual?" (2008) 7 *Visual Communication* 97-118.

¹⁷³ See *Norowzian v Arks Ltd (No 1)* [1998] FSR 394; *Norowzian v Arks Ltd (No 2)* [2000] FSR 363. This state of affairs is made neither clearer nor more coherent by the fact that films are not regarded by copyright law as works of visual art: see Macmillan, n 172 *supra*.

¹⁷⁴ See Working Paper 2, n 1 *supra*, section 7.1.3; & see also section 5.2.1 above.

¹⁷⁵ Section 5.2.2 above.

¹⁷⁶ Section 5.2.1 above.

stimulation of synergistic creative interactions during the space of the festival as event.

5.2.5 Reuse of copyright works

To some extent copyright law recognises the fact that the process of creativity is an engagement with what has gone before. In part, this recognition is manifested through the (in)famous idea/expression dichotomy, which functions to give copyright protection to the particular expression of the copyright work and not to the idea embodied in it. Consequently, a different way of expressing or of developing the same idea as that embodied in a copyright work cannot constitute infringement of the copyright in that work. In the context of the copyright regime, the rule makes some sense (at least to copyright lawyers) and has the effect of constraining the extent to which the copyright monopoly is capable of suppressing creativity and freedom of expression.¹⁷⁷ However, in the real world of creative practice, it suffers from the obvious problem that the way an idea is expressed is an important part of the idea itself with the result that this so-called dichotomy is decidedly elusive.¹⁷⁸

As a result of the fact that it is not always possible to distinguish idea and expression and because subsequent creativity, therefore, often involves the repetition of expression in order to develop the idea embodied in a copyright work, there are also a series of defences to copyright infringement. Some of these defences are designed to achieve particular policy ends, such as ensuring the role of libraries and archives in collecting and preserving copyright works. At the their broadest, however, the defences were designed to bolster the role of the idea/expression dichotomy in ensuring that copyright does not become a cramp on creativity and freedom of expression. For this purpose, the most important of these defences is the fair use/fair dealing defence, which exist in common law systems but not (usually) in civil law systems. There is, however, a serious concern about whether or not the systems of defences to copyright infringement is capable of achieving the policy ends for which it is allegedly designed. There are various reasons for this. First, of all aspects of copyright law, this is probably one of the

¹⁷⁷ See, eg, F Macmillan, "Towards a Reconciliation of Free Speech and Copyright" in E. Barendt (ed), *Yearbook of Media Law and Entertainment Law* (Oxford: Clarendon Press, 1996); F Macmillan, "Legal Policy and the Limits of Literary Copyright" in P. Parrinder & W. Chernaik (eds), *Textual Monopolies: Literary Copyright and the Public Domain* (London: London University Press, 1997); F Macmillan, "Commodification and Cultural Ownership" in J Griffiths and U Suthersanen, *Copyright and Free Speech: Comparative and International Analyses* (Oxford: OUP, 2005) 35-65.

¹⁷⁸ Added to which is the fact that copyright law, as it relates to works of visual art, is arguably inconsistent with respect to this principle: see Macmillan, n 172 *supra*.

least harmonized internationally.¹⁷⁹ Not only is there very little European harmonization on the issue of defences, which tends to reflect instead the division between the common law and civil law traditions, there are also significant differences between the various common law jurisdictions internationally. For example, the English fair dealing defence applies only in particular stipulated circumstances¹⁸⁰ while the US fair use defence has a broader application.¹⁸¹ This creates an aura of confusion around the question of the application of the defences, which is in no way alleviated by the mish-mash of judge-made law that characterises the application of these defences.¹⁸² Then one has to take into account the fact that these are (usually) defences, which means that the burden of proof rests with the person attempting to rely on them.¹⁸³ Overall, the effect of all this is to create an extremely uncertain, confusing and precarious regime of defences and exceptions. So far as creativity is concerned, a possible effect of such a situation is a conservative approach to the re-use of copyright works that potentially constrains creativity.

It is difficult to assess the extent to which this has a constraining effect in the hothouse context of the festival. Given the sense of temporality and departure from the quotidian that characterises festivals, it is possible that participants act without particular concern for these legal niceties. That is, without being unduly constrained by the limitation and uncertainty of the legal regime relating to permissible re-use of copyright works. To some extent this question may depend upon the type of festival and the particular traditions of re-use that prevail in the relevant artistic tradition. For example, both jazz and blues music depend on a culture of re-use that

¹⁷⁹ Attempts at some minimal level of harmonization in the form of the famous three-step test in the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs Agreement), Art 13 have not assisted, especially since the relationship between the TRIPs Agreement three-step test and the pre-existing limitation on the scope of defences and exceptions in the Berne Convention for the Protection of Literary & Artistic Works, Arts 9(2), 10(1), 10(2), 10bis(1) & 10bis(2), which were incorporated by reference into the TRIPs Agreement (see Art 9.1), is unclear. This lack of clarity was well demonstrated by the report of the WTO Panel in *US – Section 110(5) of the US Copyright Act*, WT/DS160/R, 12 March 2001.

¹⁸⁰ See UK Copyright, Designs and Patents Act 1988, ss 29 & 30.

¹⁸¹ See US Copyright Act of 1976, s 107.

¹⁸² See Macmillan, “Commodification and Cultural Ownership”, n 177 *supra*; & Macmillan, “Public Interest and the Public Domain in an Era of Corporate Dominance”, n 141. The role of fashion and pressure groups on the way in which judges apply these exceptions also needs to be taken into account. Eg, in some jurisdictions, like Canada at the moment, there appears to be a backlash against copyright maximalist positions, that has arguably lead to a more generous application of the defences, at least for the time being: see, eg, M Geist (ed), *The Copyright Pentology: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law* (Ottawa: University of Ottawa Press, 2013), chs 4-8.

¹⁸³ A state of affairs that is made worse when the copyright holder is a corporation with deep pockets and the alleged infringer is an individual with more limited financial resources.

is at odds with the dictates of copyright law.¹⁸⁴ In the environment of the festival, this culture of music-making is likely to be particularly evident. The extent to which the copyright rules on re-use constrain creativity may also be affected by the degree to which the activities of the festival depend upon, or are penetrated by, the interests of those who commodify and distribute copyright works (for example, publishers, film and music producers). It is possible that the presence of such undertakings, which typically have an interest in the enforcement of the copyright regime, might have a “policing” effect.

In the end, the point here is that the idea of the festival as a rupture in, and suspension of, the quotidian and a hothouse of creative activity sits badly with the imposition of a legal regime that requires careful assessment of the pro and cons of any re-use of a copyright work. It is also the case that in a temporally and spatially limited live environment, the monitoring and enforcement of copyright interests seems, at the same time, both heavy-handed and impractical. The image of the law (if this matters) is in no way enhanced by pretending that its application is unproblematic.

5.3 Uneven coverage of copyright

Taken together the various aspects of the copyright regime considered in paragraphs 5.2.1 to 5.2.5, above, indicate its uneven relationship to creativity and cultural production. This phenomenon, as already noted, is not limited to the festival environment. However, the hothouse of the festival environment provides a useful context in which to consider the effects of copyright’s uneven coverage. The question of uneven coverage is also of importance in the context of this study because it may bear on the question of the relationship between copyright (and other intellectual property rights) and communal rights in relation to cultural heritage.

5.3.1 Effect on creativity and cultural production

I have argued elsewhere that the rhetoric of the copyright regime with respect to creativity is at odds with the operation of the regime.¹⁸⁵ The basis of this argument is that, in the context of the global media and entertainment market, the copyright regime contributes to the production of a situation that, if anything, appears to undermine its rhetorical support for creativity. The argument here, however, is somewhat different. It seems reasonable to argue that the uneven coverage of copyright in

¹⁸⁴ See, eg, S Vaidhynathan, *Copyrights & Copywrongs: The Rise of Intellectual Property & How it Threatens Creativity* (New York, New York University Press, 2001).

¹⁸⁵ See, eg, Macmillan, “Commodification and Cultural Ownership”, n 177 *supra*; & Macmillan, “‘Are you sure that we are awake?’: European Media Policy & Copyright”, n 121 *supra*.

creative contexts, such as arts festivals, is another indicator of its problematic relationship with creativity and with its own rhetoric of creativity. It is another thing altogether to argue that this uneven coverage has the direct effect of inhibiting the process of creativity and cultural production in such contexts.

The existence of copyright might feasibly have this effect. This is because one of the effects of copyright law is to allow the private appropriation of what would otherwise be in the intellectual commons and freely available for everyone to use. In this way copyright law might be regarded as creating a series of obstructions to creative synergistic interactions. Given that the well-known tragedy of the physical commons is not an issue in the intellectual commons because, unlike the physical commons, things in the intellectual commons are not degraded or exhausted by use, forms of appropriation are not necessary to conserve the abundance or fecundity of the intellectual commons.¹⁸⁶ Rather, it is claimed that private appropriation through copyright law is necessary because in the absence of reward, appropriate investment and effort in cultural production and creativity might not be made. This argument tends to expose copyright's particular interest and concern with commodified cultural products and the position of those who commodify them.¹⁸⁷ A relatively convincing argument might be made that the conferring of a monopoly right as a result of investment of financial resources in the distribution of creative works by publishers and film and music production houses encourages such investment. It also seems possible that, given its expense, creativity in film-making may be supported by the granting of such rights.¹⁸⁸ What might be harder to sustain is the proposition that a motivation for creativity in the literary, dramatic, musical or visual arts is the grant of a legal monopoly. Such a proposition tends to underrate the inherent nature of the drive to create such works. The suggestion that the grant of this monopoly encourages such creativity because it provides a level of financial support that, in turn, provides time for such activities, is more or less flatly contradicted by the fact that copyright generates a minimal economic return for most people who create copyright works of this type.¹⁸⁹ Even the proposition that the grant of copyright in such circumstances is at least consistent

¹⁸⁶ On this argument, see further F. Macmillan, "Many Analogies, Some Metaphors, Little Imagination: The Public Domain in Intellectual Space" [2010] 2 *Pòlemos* 25-44.

¹⁸⁷ See also the discussion in Working Paper 2, n 1 *supra*, section 7.1.3.

¹⁸⁸ As a creative work, film is born commodified: see Macmillan, n 18 *supra*. It is arguable that what copyright really supports in relation to film-making is the volume of production rather than enhancing the level of creativity or innovation.

¹⁸⁹ See, eg, Towse, *Creativity, Incentive and Reward: An Economic Analysis of Copyright and Culture in the Information Age*, n 141 *supra*, esp chs 6 & 8.

with a policy of supporting creative artists has be qualified to the extent that this can only be true if the copyright monopoly does not interfere with the creativity of others.

In these circumstances it is difficult to know the effect of the uneven coverage of copyright in the festival environment. This is, perhaps, particularly the case because this uneven coverage maybe further complicated by a tendency not to enforce some types of copyright interests in the festival hothouse. This proposition follows from the nature of the festival itself and the fact that its various participants come together in a situation that represents a rupture in time, space and the regularity of the quotidian.¹⁹⁰ One possibility is that the confusion generated by this unevenness of both coverage and enforcement induces a paralysis of creativity. However, the contrary conclusion seems at least as compelling. This is that the uneven coverage of copyright promotes creativity in the festival environment because it means that there is no legal impediment to the free generation of forms of creativity in the spaces not covered by copyright.

5.3.2 Implications for the relationship between copyright and cultural heritage

So how do we characterise these spaces that are not appropriated by copyright? From the copyright perspective, these spaces are in the intellectual public domain. Copyright does not need to say more about them because it is not concerned with the legal architecture of the intellectual public domain. One possibility is that these spaces reflect the cultural heritage component of arts festivals. This would be a neat way of resolving the tension between the private ownership regime of copyright and the communal interest in cultural heritage. However, like many neat solutions it is unsatisfactory. There is no logical reason why the cultural heritage aspects of festivals should be confined to what copyright has jettisoned, nor is there any good reason for assuming that copyright and cultural heritage cover mutually exclusive zones. Certainly, in the current legal environment, the fact that copyright does not cover all forms of creativity that take place at arts festivals, gives a sort of breathing space to communal rights in cultural heritage, but it also suggests the possibility that those rights will be suffocated by the presence of copyright in other aspects of festival activity. In these circumstances, it seems that there is something to be said for the proposition that the limited space of festival should be recognised as a communally owned form of cultural heritage. This would imply a limit on the exercise of private property rights within

¹⁹⁰ See Working Paper, n 1 *supra*, section 7.1.1.

the festival space. Such an approach would be consistent with that applying to tangible property regarded as constituting cultural heritage. It might also provide the basis for the development of a more coherent regime to support creativity in the festival environment. The current patchwork of private copyright interests seems incoherent in the context of the type of community event represented by an arts festival.

The argument that festivals are an important moment of community and being together in a physical sense resonates strongly through this project. Copyright with its ascetic system of rivalrous private rights has little to contribute here. On the other hand, it has an evident influence on the nature and function of arts festivals. As argued in Working Paper 2, the categories of copyright protected works have a relationship of constitution and authorisation with the generally accepted definition of the “arts”, which (amongst other things) resonates in the way in which festivals describe themselves – so that festivals typically identify themselves as film festivals, musical festivals, theatre festivals and so on, even if in fact empirical research reveals that almost no festivals confine themselves to only one form of “artistic” output.¹⁹¹ In these circumstances it would be tempting (and much easier) to treat festivals as being just like any other form of distribution of copyright protected works. Turan, for example, argues that film festivals, at least, are an alternative form of distribution for films that have failed to find the usual commercial outlets for distribution.¹⁹² This observation might also hold good for music festivals given that there are particular constraints on commercial distribution in both the film and music industries, which have been produced by the copyright system.¹⁹³ Like all constraints, these are likely to produce a drive for alternative means of fulfilling desire. However, limiting our understanding of festivals to being merely another means of distribution is really limiting our understanding of the nature of arts festivals and their social, political and economic significance.

The fact that arts festivals have become to some extent a means of distribution of commodified cultural products suggests that they cannot

¹⁹¹ Macmillan, n 1 *supra*, section 7.1.3.

¹⁹² Turan, n 13 *supra*, at 7-8. And, anecdotally, there is a tendency to refer to certain films as “festival films”, meaning films that would not achieve cinema release because, while regarded as artistically or cinematographically important, they are also regarded as commercially non-viable.

¹⁹³ See F. Macmillan, “Copyright and Corporate Power” in R. Towse (ed), *Copyright and the Cultural Industries* (Edward Elgar Publishing, 2002), 99-118; Macmillan, n 18 *supra*. It is important to note that the growth of live performances generally is regarded by many artists as a method of avoiding the constraints of the copyright system. Consequently, there is an increasing revenue stream for artists arising from live performances: see T Künstner, M Le Merle, H Gmelin & C Dietsche, *Il Futuro Digitale dell'Italia Creativa: L'Impatto Economico della Digitalizzazione e di Internet sul Settore Creativo in Italia e in Europa* (Rome: Booz & Company, 2013), 42 & Figure 19.

be so easily conceived of as challenging the needs of the capitalist system, as it has been argued was the case for the traditional European agrarian festivals that form the historical antecedents to the current concept of the festival.¹⁹⁴ As with the whole of Western society they have, at one level, been captured and transformed by capitalist relations. However, it is also the case that the festival - with its inherent notion of a departure and suspension from the everyday - does not serve the need for “regular, disciplined labour and the rational accumulation of capital”.¹⁹⁵ Despite this failure to conform to the demands of the capitalist system its form continues to flourish. The empirical work conducted for this project suggests that the current state of economic crisis has had some effect on the festival environment, with some festivals being unable to access the funds necessary to continue their operations.¹⁹⁶ Nevertheless, the festival environment remains extremely well-supported (in all senses). Rather than this being in spite of the current capitalist crisis, it might be because of it.

One of the consequences of the crisis has been the growth of movements in which public places have been occupied as a form of protest.¹⁹⁷ All of these movements reflect and depend upon a set of characteristics that have common ground with the definition of a festival adopted for this project. Of particular importance, in this respect are: first, being together in a physical sense in a particular space and time; and secondly, the suspension of the quotidian. These movements have been variously theorised as reflecting the rise of the multitude, the constituent power of which challenges the constituted power of the sovereign.¹⁹⁸ As Douzinas argues, the social category of the multitude has not always translated itself into a political category. Consequently, only some of the popular

¹⁹⁴ C Hill, *Society and Puritanism in Pre-Revolutionary England* (London: Secker & working, 1964), at 146-159, 183-194 & 209, cited in R Bauman, “The Place of the Festival in the Worldview of Seventeenth-Century Quakers” in Falassi (ed), n 70 *supra*, 93-98.

¹⁹⁵ Bauman, n 194 *supra*, 95.

¹⁹⁶ See Appendix 2. The evidence does not allow more than a suggestion of cause and effect. Only a handful of festival websites listed in Appendix 2 state that they are in suspension due to lack of funds. It is a speculation (although a reasonable one) that lack of funds is a consequence of the economic crisis.

¹⁹⁷ There is much to protest against but the obvious candidates include: those that brought the crisis upon us (banks and other private financial institutions); those that collaborated with them or failed to adequately regulate them (governments); those that want to impose unacceptable “austerity” solutions that aim to breathe new life into the system of capitalist accumulation (international economic institutions like the IMF and the World Bank, the EU); those that collaborate with the peddlers of “austerity” (governments and bureaucrats). See further Douzinas, n 156 *supra*.

¹⁹⁸ As Douzinas, n 156 *supra*, at 32, observes: “king, state, the people or capital are all figures of sovereignty”. On the rise of the multitude/crowd, see Douzinas, *ibid.*, esp ch 8 & 189-197. As Douzinas shows, the extent to which the multitude/crowd can be regarded as posing a serious challenge is a matter of debate amongst radical theorists, who have proposed various interpretations of the popular uprisings: see Douzinas, *ibid.*, 176-188.

uprisings of recent times have translated themselves into serious political challenges to the sovereign power of states or of capital.¹⁹⁹ Nevertheless, one of the characteristics of these new movements is the extent to which they have reclaimed community and public spaces:

What are the lessons of the squares? First, the rediscovered principles of publicity and equality. The multitude as social category became a force of radical change when it met in public. Public assemblies, direct democracy and collective action have revived the power of the people ... From space to time. The second legacy of the occupations is the aesthetics of praxis. Praxis is the temporal dimension of constituent power. The linear time of work was replaced by the teleological temporality of creation. Praxis produces new subjects, collective praxis changes the world. But how can constituent power survive the emptying of the squares. The resistance disarticulated subjectivities from capitalist biopolitics. The production of subjectivity must now move from the squares to communities.²⁰⁰

Douzinis develops this concept into the “ethos of the collective”:

The organizational principles of the squares should be extended to all areas of economic, social and cultural life ... Public art, film shows, music performances, literary readings and debates in squares would produce an alternative political culture. These proposals aim at repoliticizing politics and introducing the ethos of the collective into all aspects of public life.²⁰¹

In the context of arts festivals the reinvigoration of the ethos of the collective, proposed by Douzinis, clearly reflects the argument sustaining the Eurofestival project, which is that festivals should be regarded as a site of public culture and democratic debate.²⁰² An essential component of this argument, and of Douzinis’ argument, is that too much of our cultural life is privatised. In the context of the present project, understanding arts festivals as a form of cultural heritage is a way of re-establishing the festival as site of public culture that can recreate community and play a role in developing the ethos of the collective.

There are a number of different ways of thinking about the current proliferation of arts festivals, despite the current adverse economic

¹⁹⁹ “The successful uprisings in Tunisia, Egypt and Greece moved from massive occupations to parliamentary elections. The Occupy movements in New York or London on the other hand did not make that transition and have not achieved major victories yet”: Douzinis, n 156 *supra*, at 190.

²⁰⁰ Douzinis, n 156 *supra*, 194-195.

²⁰¹ Douzinis, n 156 *supra*, 196-197.

²⁰² Note 2 *supra*.

climate. At the most depressing end of the spectrum, one could think of arts festivals as being a relict of a former idea of community, which has been captured and subjugated to the logic of capitalist accumulation. In this scenario, an aggressive system of intellectual property enforcement in the context of arts festivals would provide the basis for such capture and subjugation in the festival space. Alternatively, and less bleakly, the proliferation of arts festivals could be understood as a response to the loss of community, to the loss of the ethos of the collective, to the loss of being together in a physical sense. Such an explanation might be located within the recent movements to reclaim community and public spaces. If this is the case, then it is important to develop a legal architecture of public or community cultural rights in the context of arts festivals that is strong enough to resist the constant encroachment of private intellectual rights over cultural output. This is not an argument against intellectual property. Rather, it is an argument in support of a balanced legal regime that supports the private rights of creators while at the same time protecting and reclaiming community rights over culture. It is important to understand, however, that arts festivals are not just useful examples of sites of cultural production in which such a balance should be sought. Arts festivals, which are such a constant presence in our cultural life, are *the* sites of cultural and creative production that should provide an opportunity for resistance to the logic of capitalist accumulation and its creeping privatization of everything.

6 Conclusion

The working taxonomy of festivals proposed at the outset of this project proposed an analysis of the concept of the festival as a form of cultural heritage based upon four distinctions, which were:

- Whether the festival is privately or publicly funded;
- Whether the festival is aimed at a “professional” audience or at the general public;
- Whether the primary purpose of the festival is the marketing of discrete cultural products (for example, books, films, music) or is the generation or development of creative interactions;
- Whether the subject matter of the festival falls within the possible scope of copyright protection (that is, the so-called creative arts) or not.

The empirical work demonstrates that all of these dichotomies are too simple to catch the complexities of the festival environment and its relationship to cultural heritage. It also suggests that the first three proposed dichotomies, while describing general tendencies with respect

to the sample of arts festivals under consideration, do not hold conceptual water as dichotomies. In each of these three cases the empirical work, viewed through the lens of the accompanying theoretical analysis, raised serious questions about the accuracy of the suppositions upon which the proposed dichotomy was based. In the fourth case, however, the empirical work supported the validity of the dichotomy in the sense that it exposed the uneven application of copyright to the subject matter of arts festivals. One consequence of this uneven application is that there are creative acts and/or acts of cultural production that take place in the space of arts festivals that do not fall within the scope of copyright protection. However, this dichotomy between things to which copyright attaches and things to which it has no application is not, in general, a reliable basis for distinguishing arts festivals from one another. The reason for this depends upon another important conclusion drawn from the empirical work for this project, which is that despite arts festivals often branding themselves as focussing on a particular artistic form (film, music, theatre, dance, literature and so on) in fact all arts festivals engage in or support multiple forms of creative activity.²⁰³ Nevertheless, the insight that copyright applies unevenly across these different forms of creative activity is extremely useful in developing two major themes of the project. These are, first, the role of the copyright regime in creative production at arts festivals and, secondly, the relationship of that regime with the cultural heritage functions of arts festivals.

It is important that in the case of all four proposed dichotomies, the testing of the hypothesis in the light of the empirical evidence provided important material for the development of the theoretical aspects of the project. In another words, what might be described as negative research results (in the sense that the empirical evidence did not support the initial hypothesis) have had positive results in the context of the research questions investigated in this project. The investigation of funding structures and the role of patronage has facilitated an extended consideration of how local, regional, national and international institutions prioritise and support festivals as community events.²⁰⁴ The examination of the nature of the festival audience has supported an analysis of the meaning and importance of community for the purpose of defining cultural heritage.²⁰⁵ This theme also emerged from the attempt to distinguish between commercial and creative functions of arts festivals alongside the development of a better understanding of the nature of

²⁰³ See Working Paper 2, n 1 *supra*, sections 7.1.2 & 7.2.3; & section 4.2 above.

²⁰⁴ See section 2 above.

²⁰⁵ See section 3 above.

creativity in the arts festival context.²⁰⁶ Finally, the way in which this creativity relates to the copyright regime has been critical in developing the theoretical approach to the relationship between copyright and cultural heritage.²⁰⁷

²⁰⁶ See section 4 above.

²⁰⁷ See section 5 above.

APPENDIX 1

Festivals in Operation in 2013²⁰⁸

Film Festivals

1. Autunnonero – Festival Internazionale di Folklore e Cultura Horror, www.autunnonero.com, accessed 14/05/2013
2. Bari International Film and TV Festival, www.bifest.it, accessed 13/05/2013
3. Bergamo Film Meeting, www.bergamofilmmeeting.it, accessed 13/05/2013
4. Biografilm Film Festival – International Celebration of Lives, www.biografilm.it, accessed 15/05/2013
5. Capalbio International Short Film Festival, www.capalbiocinema.com [M, R, P, C, 15/05/2013
6. Cinedeaf: Festival del Cinema Sordo di Roma, <http://cinedeafroma.wordpress.com/>, accessed 13/06/2013
7. Cinema Corto in Bra, www.cortoinbra.it, accessed 15/05/2013
8. Cinema Invisible – Film e documentari italiani indipendenti, <http://digilander.libero.it/fioridifuoco>, accessed 15/05/2013
9. Circuito Off - Venice International Short Film Festival, www.circuitooff.com, accessed 15/05/2013
10. Clorofilla Film Festival, www.festambiente.it, accessed 15/05/2013
11. Concorso Film Festival, www.concorso.com, accessed 15/05/2013
12. Cortisonici Festival di Cortometraggi – Usare senza nessuna cautela, www.cortisonici.org, accessed 15/05/2013
13. Cortoons – Festival Internazionale di Cinema d'Animazione, www.cortoons.it, accessed 15/05/2013
14. Courmayeur Noir Infestival, www.noirfest.com, accessed 15/05/2013
15. Est Film Festival, <http://www.estfilmfestival.it>, accessed 15/05/2013
16. Fano International Film Festival, www.fanofilmfestival.it, accessed 15/05/2013
17. Far East Film Festival, www.fareastfilm.com, accessed 15/05/2013
18. Festival Cinema Africano, Asia e America Latina, www.festivalcinemaaficano.org, accessed 14/06/2013
19. Festival Cinemambiente, www.cinemambiente.it, accessed 15/05/2013
20. Festival Cinematografico Eoliano – Eolie in video, www.centrostudieolie.it, accessed 15/05/2013
21. Festival de Cannes, www.festival-cannes.com, accessed 16/05/2013
22. Festival dei Popoli – Festival Internazionale del Film Documentario, www.festivaldeipopoli.org, accessed 16/05/2013
23. Festival del Cinema Africano, www.festivalafricano.altervista.org, accessed 16/05/2013
24. Festival del Cinema Europeo, www.festivaldelcinemaeuropeo.it, accessed 16/05/2013
25. Festival del Cinema Latino Americano Trieste, www.cinelatinotrieste.org, accessed 16/05/2013

²⁰⁸ This list is intended to be read comparatively with those contained in Working Paper 2, n 1 *supra*, Appendices 1-3.

26. Festival Internazionale del Cinema d'Arte, <http://www.festivalcinemadarte.it/>, accessed 5/7/2013
27. Festival Pontino del Cortometraggio, www.fpd.it/wjs/, accessed 16/05/2013
28. Film Festival della Lessinia, www.filmfestivallessinia.it, accessed 16/05/2013
29. Filmfestival del Garda, www.filmfestivaldelgarda.it, accessed 16/05/2013
30. Fiuggi Family Festival, www.fiuggifamilyfestival.org, accessed 16/05/2013
31. Future Film Festival, www.futurefilmfestival.org, accessed 16/05/2013
32. Genova Film Festival, www.genovafilmfestival.org, accessed 16/05/2013
33. Giffoni Experience, www.giffoniff.it, accessed 16/05/2013
34. Giornate del Cinema Europeo, www.giornatecinema.eu, accessed 16/05/2013
35. Hai Visto Mai? Festa del documentario sociale e di costume, www.haivistomai.it, accessed 16/05/2013
36. Human Rights Nights, www.humanrightsnights.org, accessed 16/05/2013
37. Imilleocchi – Festival del cinema e delle arti, www.imilleocchi.com, accessed 20/05/2013
38. Invideo – Mostra internazionale di video e cinema oltre, www.mostrainvideo.com, accessed 20/05/2013
39. Ischia Film Festival, www.ischiafilmfestival.it, accessed 20/05/2013
40. Korea Film Fest – Festival of Korean Cinema in Italy, www.koreafilmfest.com, accessed 20/05/2013
41. Lago Film Festival – Festival Internazionale di Cortometraggi di Documentari e Sceneggiature, www.lagofest.org, accessed 20/05/2013
42. Le giornate del Cinema Muto di Pordenone, www.cinetecadelfriuli.org/gcm, accessed 20/05/2013
43. Linea D'Ombra – Festival Culture Giovani, www.festivalculturegiovani.it, accessed 20/05/2013
44. Magma – Mostra di cinema breve, www.magmafestival.org, accessed 20/05/2013
45. Malescorto, www.malescorto.it, accessed 20/05/2013
46. Maremetraggio, www.maremetraggio.com, accessed 12/5/2013
47. Mauro Bolognini Film Festival – Cinema e Letteratura, www.centromaurobolognini.it, accessed 20/05/2013
48. MedFilm Festival – Cinema del Mediterraneo a Roma, www.medfilmfestival.org, accessed 14/05/2013
49. Mediterraneo Video Festival – Festival Internazionale del Cinema Documentario, www.medvideofestival.net, accessed 20/05/2013
50. MIFF Film Festival, www.miff.it, accessed 20/05/2013
51. Milano Film Festival, www.milanofilmfestival.it, accessed 20/05/2013
52. Molise Cinema Film Festival, www.molisecinema.it, accessed 20/05/2013
53. Mostra Internazionale d'Arte Cinematografica di Venezia, www.labiennale.org, accessed 20/05/2013
54. Napolifilfestival, www.napolifilmfestival.com, accessed 20/05/2013
55. N.I.C.E. New Italian Cinema Events, www.nicefestival.org, accessed 20/05/2013
56. NovaraCineFestival – ScenariOrizzontali, www.novaracinefestival.com, accessed 20/05/2013
57. Offcinema Festival – Visioni Italiane, www.cinetecadibologna.it/visioni_italiane_2013, accessed 20/05/2013
58. Orobie Film Festival, www.teamitalia.com, accessed 20/05/2013

59. Pentedattilo Film Festival, www.pentedattilofilmfestival.net, accessed 20/05/2013
60. Pesaro Film Festival – Mostra Internazionale del Nuovo Cinema, www.pesarofilmfest.it, accessed 20/05/2013
61. Premio Ostiglia – Arnoldo Mondadori. Un Libro al Cinema, www.teamitalia.com, accessed 20/05/2013
62. Religion Today Film Festival – International Festival of Cinema and Religion, www.religionfilm.com, accessed 21/05/2013
63. River to River – Florence Indian Film Festival, www.rivertoriver.it, accessed 21/05/2013
64. Roma Independent Film Festival, www.riff.it, accessed 21/05/2013
65. Rome Film Festival, www.romacinemafest.it, accessed 21/05/2013
66. Salento Finibus Terrae, www.salentofinibusterrae.it, accessed 12/5/2013
67. Salento International Film Festival – La Grande Festa del Cinema Indipendente Internazionale, www.salentofilmfestival.com, accessed 21/05/2013
68. SalinaDocFest – Festival del documentario narrativo, www.salinadocfest.org, accessed 21/05/2013
69. Sediciorto – International Film Festival Forlì, www.sediciorto.it, accessed 21/05/2013
70. Senza Frontiere/Without Borders Film Festival, www.withoutbordersfilm.org, accessed 05/07/2013
71. Sondrio Festival – Mostra Internazionale dei Documentari sui Parchi, www.sondriofestival.it, accessed 21/05/2013
72. Sottodiciotto Film Festival, www.sottodiciottofilmfestival.it, accessed 12/5/2013
73. SportFilmFestival, www.sportfilmfestival.it, accessed 21/05/2013
74. Taormina Film Fest, www.taorminafilmfest.it, accessed 21/05/2013
75. Terra di Siena Film Festival, www.sienafilmmfestival.it, accessed 14/05/2013
76. Terra di Tutti Film Festival – Documentari e cinema sociale dal sud del mondo, www.terradituttifilmfestival.org, accessed 21/05/2013
77. Torino Film Festival, www.torinofilmfest.org, accessed 21/05/2013
78. Torino GLBT Film Festival, www.tglff.com, accessed 21/05/2013
79. Trento Film Festival – Cinema, Letteratura, Montagna, Società, www.trentofestival.it, accessed 21/05/2013
80. Trieste Film Festival, www.triestefilmfestival.it, accessed 21/05/2013
81. Umbria Film Festival, www.umbriafilmmfestival.com, accessed 22/05/2013
82. Un Film Nello Zaino, www.filmnellozaino.it, accessed 22/05/2013
83. Video Festival Imperia – Festival Internazionale d'Arte Cinematografica Digitale, www.videofestivalimperia.org, accessed 12/05/2013
84. VIEWFest – Digital Movie Festival, www.viewfest.it, accessed 22/05/2013
85. Visioni Fuori Raccordo Film Festival, www.fuoriraccordo.it, accessed 22/05/2013
86. Youngabout Film Festival – Giovani e cinema, www.youngabout.com, accessed 22/05/2013

Music Festivals

1. Canzone Italiana – Festival Nazionale della canzone d'autore per giovani talenti, www.teamitalia.com, accessed 22/05/2013
2. EstOvest – un viaggio nella musica di oggi, www.xeniaensemble.it, accessed 22/05/2013
3. Festa Europea della Musica, www.festaeuropeadellamusica.com, accessed 22/05/2013
4. Festival Cusiano di Musica Antica – Antichi suoni e l'isola incantata, www.amicimusicacocito.it, accessed 22/05/2013
5. MI AMI – Festival della musica bella e dei baci, www.rockit.it/miami, accessed 22/05/2013
6. Opera Barga, www.operabarga.it, accessed 14/05/2013
7. Pergine Spettacolo Aperto – L'arte di essere fuori, www.perginepsa.it, accessed 22/05/2013
8. Rototom Sunsplash – European Reggae Festival, www.rototomsunsplash.com, accessed 12/05/2013
9. Südtirol Jazz Festival Alto Adige, www.suedtiroljazzfestival.com, accessed 22/05/2013
10. Voci per la Libertà – Un Canzone per Amnesty, www.vociperlaliberta.it, accessed 22/05/2013

Culture Festivals

1. Assalti al Cuore – Festival di Musica e Letteratura, www.assaltialcuore.it, accessed 23/05/2013
2. Assud Festival – Festival delle Arti per il Sociale, www.assud.org, accessed 23/05/2013
3. Blogfest, www.blogfest.it, accessed 23/05/2013
4. Comoda_mente – Parola e città in festival, www.comodamente.it, accessed 23/05/2013
5. Danae Festival, www.danaefestival.com, accessed 23/05/2013
6. Equilibrio – Festival della nuova danza, <http://www.auditorium.com/eventi/festival/5456856/>, accessed 23/05/2013
7. Emilia Romagna Festival, www.emiliaromagnafestival.org, accessed 24/05/2013
8. Fabbrica Europa, www.fabbricaeuropa.net, accessed 24/05/2013
9. Fenice Festival – International Nine Arts Festival, www.fenicefestival.it, accessed 24/05/2013
10. Ferrara Buskers Festival – Rassegna Internazionale del Musicista di Strada, www.ferrarabuskers.com, accessed 24/05/2013
11. Festival del Mondo Antico, <http://antico.comune.rimini.it/>, accessed 24/05/2013
12. Festival della Letteratura Mediterranea, www.mediterraneoecultura.it, accessed 24/05/2013
13. Festival Internazionale dell'Oralità Popolare, www.reteitalianaculturapopolare.org, accessed 24/05/2013

14. Festival delle Colline Torinesi, Torino Creazione Contemporanea, www.festivaldellecolline.it, accessed 24/05/2013
15. Festival di Santarcangelo, www.santarcangelofestival.com, accessed 24/05/2013
16. Festival di Storytelling – Raccontamiunastoria, www.raccontamiunastoria.com, accessed 24/05/2013
17. Festival Internazionale di Poesia di Genova, www.festivalpoesia.org, accessed 24/05/2013
18. Festival Mirabilia – Festival Internazionale di Teatro Urbano: *Vetrina Italiana*, www.festivalmirabilia.com, accessed 24/05/2013
19. Festival of Festivals – Nuova energia per la cultura e il business, www.festivaloffestivals.org, accessed 24/05/2013
20. Festival Resistente, www.festivalresistente.it, accessed 24/05/2013
21. Festivalletteratura, www.festivalletteratura.it, accessed 24/05/2013
22. Fotografia – Festival Internazionale di Roma, www.fotografiafestival.it, accessed 24/05/2013
23. Gender Bender, www.genderbender.it, accessed 24/05/2013
24. Human Rights Nights, www.humanrightsnights.org, accessed 24/05/2013
25. Immagini dell'Interno – Festival Internazionale Teatro di Figura, www.immaginidellinterno.it, accessed 24/05/2013
26. Inteatro Festival, www.inteatro.it, accessed 26/05/2013
27. Itinerario Stabile – Festival di musica, arte, paesaggio, performance e architettura, <http://www.itinerariofestival.it/Itinerario/Homepage.html>, accessed 26/05/2013
28. La Biennale di Venezia, <http://www.labiennale.org/en/biennale/>, accessed 26/05/2013
29. La Fabbrica Delle Idee – Racconigi Festival, www.progettocantoregi.it, accessed 26/05/2013
30. La Notte della Taranta, www.lanottedellataranta.it, accessed 26/05/2013
31. Lago Maggiore LetterAltura – Festival di letteratura di montagna, viaggio e avventura, www.letteraltura.it, accessed 26/05/2013
32. Libri Come: Festa del Libro e della Lettura, <http://www.auditorium.com/eventi/5423662>, accessed 26/05/2013
33. Mare di Libri – Festival dei ragazzi che leggono, www.maredilibri.it, accessed 26/05/2013
34. MarteLive – Lo Spettacolo Totale, www.martelive.it, accessed 26/05/2013
35. Napoli COMICON – Salone Internazionale del Fumetto, www.comicon.it, accessed 26/05/2013
36. Napoli Teatro Festival Italia, www.teatrofestivalitalia.it, accessed 26/05/2013
37. Narrazioni Festival – Libera Tutti, www.narrazioni.it, accessed 26/5/2013
38. Parolario, www.parolario.it, accessed 27/05/2013
39. Poesia Festival, www.poesiafestival.it, accessed 27/05/2013
40. Pordenonelegge – Festa del Libro con gli autori, www.pordenonelegge.it, accessed 27/05/2013
41. Primavera dei Teatri, www.primaveradeiteatri.it, accessed 27/05/2013
42. Romeuropa Festival, www.romaeuropa.net, accessed 27/05/2013
43. Scrittori in città, www.scrittoringitta.it, accessed 27/05/2013
44. Spettacoli di Mistero, <http://www.spettacolidimistero.it/index.asp>, accessed 27/05/2013

45. Spoleto Festival – Festival dei Due Mondi di Spoleto, www.festivaldispoleto.com, accessed 27/05/2013
46. StreamFest, Festival Internazionale di Cultura Eco Digitale, www.streamfest.org, accessed 27/05/2013
47. TreviglioPoesia – Festival di poesia e video/poesia, www.trevigliopoesia.it, accessed 27/05/2013
48. Vicino/lontano - Identità e differenze al tempo dei conflitti, www.vicinolontano.it, accessed 27/05/2013
49. Voci di Fonte – Festival di Siena, <http://www.sienafestival.it/>, accessed 27/05/2013
50. Women's Fiction Festival, Festival internazionale di narrativa femminile, www.womensfictionfestival.com, accessed 27/05/2013

Appendix 2

Festivals (Apparently) Suspended or Closed in 2013²⁰⁹

Film Festivals

1. AsiaticaFilmMediale – Incontri con il cinema asiatico, www.asiaticafilmmediale.it
2. Asolo Art Film Festival, www.asolofilmfestival.it
3. Alba International Film Festival, http://www.sentieriselvaggi.it/7/42303/Alba_International_Film_Festival.htm
4. Bobbio Film Festival, <http://www.bobbiofilmfestival.it>
5. Cinema del Reale – Festa del Cinema Documentario, www.cinemadelreale.it
6. Corto Dorico – Festival del Cortometraggio, www.cortodorico.it
7. Cortopotere – ShortFilmFestival, www.cortopotere.it
8. Ecovision Festival – Festival Internazionale di Ambiente e Cinema, www.ecovisionfestival.com
9. Festival delle Cerase, http://www.festivaldellecerase.com/cinema_al_castello.htm
10. Festival Internazionale degli Autori Indipendenti - ResistenteMente <http://www.menteantica.it/am/eventi/tutti-gli-eventi/details/215-roccasecca-fr-primo-festival-internazionale-autori-indipendenti>
11. I Castelli Animati – International Animated Film Festival, www.castellianimati.it
12. I Dispersi, www.hideout.it
13. Il Cinema Ritrovato, <http://www.cinetecadibologna.it/cinemaritrovato2011>
14. Imaginaria Film Festival, www.imaginaryfilmfestival.it
15. Immaginario Festival, www.immaginariofestival.org
16. Io, Isabella International Film Week, www.ioisabella.org
17. Italiani Brava Gente, www.italianibravagente.info
18. Jonio Educational Film Festival, www.jeffestival.org
19. La Cittadella del Corto, www.cittadelladelcorto.it
20. Mostra Del Cinema Dello Stretto, www.mostradelcinemadellostretto.com
21. Potenza International Film Festival, www.potenzafilmfestival.it
22. Ravenna Nightmare Film Festival, www.ravennanightmare.it
23. Rimusicazioni Film Festival – Add a new soundtrack to an old silent movie, www.rimusicazioni.it
24. Sannio Filmfest – Festival internazionale della scenografia e del costume, www.sanniofilmfest.it
25. Sguardi di Cinema Italiano, www.sguardidicinemaitaliano.org
26. Strade del Cinema – Festival Internazionale del Cinema Muto Musicato dal Vivo, www.stradedelcinema.it
27. Tropea Film Festival, www.tropeafilmfestival.it
28. Universo corto – International Short Film Festival, www.giovanipersone.splinder.com
29. Vam Fest, www.vamfest.it
30. Vicolo Corti, http://www.associazioneilserraglio.it/vicoli_corti_2011.html

²⁰⁹ This list is intended to be read comparatively with those contained in Working Paper 2, n 1 *supra*, Appendices 1-3.

- 31. Videominuto, www.videominuto.it
- 32. X_Science – Il cinema tra scienza e fantascienza, www.xscience.it

Music Festivals

- 33. Castellfranco Blues Festival, www.castelfrancoblues.it
- 34. Creuza de Mà, www.festivalcarloforte.org
- 35. Festival Brasiliano, www.livetime.it
- 36. Festival Sete Sóis Sete Luas, www.7sois7luas.com
- 37. Folkermesse, <http://www.ethnosuoni.it/folkermesse/index.html>
- 38. Giuseppe Sinopoli Festival, www.sinopolifestival.it
- 39. Novellara Blues Festival, <http://www.novellarabluesfestival.it/contattiok.htm>

Culture Festivals

- 40. Afropean Meeting Festival, Raduno Internazionale tra Arte e Cultura Africana, www.afropeanfestival.com
- 41. Arlecchino D'oro – Festival Europeo del Teatro di Scena e Urbano, http://www.cittadimantova.it/it/doc-s-12-898-1-festival_del_teatro_60_eventi_in_dieci_giorni.aspx
- 42. Dissonanze, www.dissonanze.it
- 43. Festival della Creatività, www.festivaldellacreativita.it
- 44. Frontiere, www.frontiereweb.it
- 45. Homework Festival – Festival di Musica Elettronica e Arti Digitali, www.homeworkfestival.net
- 46. La Punta Della Lingua – Poesia Festival, <http://www.lapuntadellalingua.it/>
- 47. Le Voci dell'anima – Occidente Oriente, www.principalliproduzioni.it
- 48. L'École del Rusco – Manifestazione di Arte e Rifiuti, www.ecoledelrusco.net
- 49. Parma Poesia Festival, www.festivaldellapoesia.it
- 50. Suoni di Terra – Popoli, Ritmi e Danze: Festival delle Musiche e delle Altre Culture, www.suoniditerra.org
- 51. Suoni e Visioni – Concerti, film e video nella musica del nostro tempo, www.provincia.milano.it

APPENDIX 3

Festivals Operating Under the Patronage of UNESCO

1. Festival Internazionale del Cinema d'Arte, <http://www.festivalcinemadarte.it/>, accessed 05/07/2013
2. Salento Finibus Terrae, www.salentofinibusterrae.it, accessed 12/05/2013
3. Senza Frontiere/Without Borders Film Festival, www.withoutbordersfilm.org, accessed 05/07/2013
4. Sottodiciotto Film Festival, www.sottodiciottofilmfestival.it, accessed 12/05/2013

Festivals Operating Under the Patronage of the European Union

5. BIF&ST – Bari International Film & TV Festival, www.bifest.it, accessed 13/05/2013
6. Bergamo Film Meeting, www.bergamofilmmeeting.it, accessed 13/05/2013
7. Fabbrica Europa, www.fabbricaeuropa.net, accessed 24/05/2013
8. Festival del Cinema Europeo, www.festivaldelcinemaeuropeo.it, accessed 16/05/2013
9. Festival Internazionale del Cinema d'Arte, <http://www.festivalcinemadarte.it/>, accessed 05/07/2013
10. Giffoni Experience, www.giffoniff.it, accessed 16/05/2013
11. Giornate del Cinema Europeo, www.giornatecinema.eu, accessed 16/05/2013
12. Human Rights Nights, www.humanrightsnights.org, accessed 24/05/2013
13. La Notte della Taranta, www.lanottedellataranta.it, accessed 26/05/2013
14. Lago Maggiore LetterAltura – Festival di letteratura di montagna, viaggio e avventura, www.letteraltura.it, accessed 26/05/2013
15. MedFilm Festival – Cinema del Mediterraneo a Roma, www.medfilmfestival.org, accessed 14/05/2013
16. Napoli Teatro Festival Italia, www.teatrofestivalitalia.it, accessed 26/05/2013
17. N.I.C.E. New Italian Cinema Events, www.nicefestival.org, accessed 20/05/2013
18. Orobie Film Festival, www.teamitalia.com, accessed 20/05/2013
19. Pordenonelegge – Festa del Libro con gli autori, www.pordenonelegge.it, accessed 27/05/2013
20. Primavera dei Teatri, www.primaveradeiteatri.it, accessed 27/05/2013
21. StreamFest, Festival Internazionale di Cultura Eco Digitale, www.streamfest.org, accessed 27/05/2013
22. Taormina Film Fest, www.taorminafilmfest.it, accessed 21/05/2013
23. Terra di Siena Film Festival, www.sienafilmfestival.it, accessed 14/05/2013
24. Trieste Film Festival, www.triestefilmfestival.it, accessed 21/05/2013
25. Umbria Film Festival, www.umbriafilmfestival.com, accessed 22/05/2013
26. Voci di Fonte – Festival di Siena, www.sienafestival.it/, accessed 27/05/2013

27. Women's Fiction Festival, Festival internazionale di narrativa femminile,
www.womensfictionfestival.com, accessed 27/05/2013